United States Court of Appeals
for the Second Circuit

APPENDIX

8

NO. 77-4182

United States Court of Appeals
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

BP/S

v.

YESHIVA UNIVERSITY,
Respondent,

and

YESHIVA UNIVERSITY FACULTY
ASSOCIATION
Intervenor.

UNITED STATES COURT OF APPEALS
FILED
FEB 24 1978
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

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ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570

PAGINATION AS IN ORIGINAL COPY

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III

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Yeshiva University

Case No.: 2-CA-14697

2-RC-16662

10.30.74	Petition filed
11.12.74	Regional Director's Notice of Representation Hearing, dated
11.26.74	Hearing opened
5. 6.75	Hearing Officer's Order Transferring Representation Case to the National Labor Relations Board, dated
5. 6.75	Hearing closed
7.31.75	Respondent's Post Hearing Brief, received
8. 1.75	Charging Party's Brief, received
8.12.75	Respondent's addendum to its brief, dated
8.21.75	Charging Party's addendum to its brief, dated
11. 7.75	Respondent's letter correcting its brief, dated
12. 5.75	Board's Decision and Direction of Election, dated
12.23.75	Respondent's and Charging Party's telegram jointly requesting that the election be held on certain dates, dated
12.29.75	Board's Order Amending Direction of Election, dated
4.30.76	Respondent's letter requesting that the Board withdraw its authorization to proceed with the election and that the election be held in abeyance, dated
4.30.76	Charging Party's letter requesting the Board reconsider its decision to hold the election, dated
5. 3.76	Charging Party's letter reinterating its opposition to any decision by the Regional Director to direct an election at this time, dated
5. 4.76	Charging Party's letter in response to Respondent's letter of April 30, 1976, dated
5.13.76	Board's telegram denying the requests for review of the Board's advice to the Region to conduct the directed election and amending the direction of election, dated

IV

5.17.76	Regional Director's telegraphic message requesting the Board amend the Direction of Election, dated
5.19.76	Charging Party's letter objecting to the Regional Director's request for extension of time for the conduct of an election, dated
5.25.76	Board's Order Further Amending Decision and Direction of Election, dated
11.16.76 11.17.76	Notice of Election to be held on both dates
11.16.76 11.17.76	Certification on Conduct of Election for Poll 1, dated
11.16.76 11.17.76	Certification on Conduct of Election for Poll 2, dated
11.16.76 11.17.76	Certification on Conduct of Election for Poll 3, dated
11.24.76	Stipulation signed by Respondent and Charging Party
11.30.76	Regional Director's letter advising parties that pursuant to a stipulation entered into between the parties, a re-run election will be held by Mail Ballot and will be held by Mail Ballot and will be conducted for those employees who cast their ballots at Polling Place No. 2, dated
12.20.76	Notice of Election of Representative and Instructions to Eligible Employees Voting by United States Mail, stating votes must be received by 12:00 noon on this date
12.20.76	Tally of Ballots issued
12.29.76	Regional Director's Certification of Representative, dated

2-CA-14697

2. 4.77	Charge filed
2.22.77	Complaint and Notice of Hearing, dated
3. 7.77	Respondent's Answer, dated
3.14.77	Regional Director's Order Postponing Hearing, dated
3.16.77	General Counsel's Motion (and Petition) for Summary Judgment and Issuance of Decision and Order, dated
3.30.77	General Counsel's Further Petition for Summary Judgment and Decision and Order, dated

V

4. 8.77	Respondent's Statement in Opposition to Petition for Summary Judgment, dated
4.12.77	Board's Order Transferring Proceeding to the Board and Notice to Show Cause, dated
4.26.77	Respondent's Further Statement in Opposition to Petition for Summary Judgment and Response to Notice to Show Cause, dated
8.24.77	Decision and Order issued by the National Labor Relations Board, granting inter alia the General Counsel's Motion for Summary Judgment

1

FILE 3.6
Exec. Sec. 0
Exec. Sec. 0

MJP

221 NLRB No. 169

D--686
New York, N.Y.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FILE IN
FORMAL FILE
B S

YESHIVA UNIVERSITY

Employer

and

Case 2--RC--16662

YESHIVA UNIVERSITY
FACULTY ASSOCIATION

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Clifford P. Chaiet. Pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, and by direction of the Regional Director for Region 2, this case was transferred to the National Labor Relations Board for decision. Thereafter, the Employer and the Petitioner filed briefs in support of their respective positions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. Yeshiva University, also referred to herein as the Employer or the University, is a private institution of higher education chartered under the laws of the State of New York. Its offices and educational facilities are located on four campuses in New York, New York.[1] During the past year the University derived gross income in excess of $1,000,000 from sources other than donations and restricted contributions. At least $50,000 of this income was derived directly from sources located outside the State of New York. Based on the foregoing stipulated facts, we find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the policies of the Act to assert jurisdiction herein.

2. The labor organization involved claims to represent certain employees of the Employer.[2]

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[1] The University is composed of 12 schools and colleges and a number of programs. These are as follows: Yeshiva College, Bernard Revel Graduate School (whose summer session is known as the Harry Fischel School), James Striar School of General Jewish Studies, Wurzweiler School of Social Work, Stern College for Women, Erna Michael College for Hebraic Studies, Teachers Institute for Women, Ferkauf Graduate School of Humanities and Social Sciences, Belfer Graduate School of Science, Albert Einstein College of Medicine, Sue Golding Graduate School of Medical Sciences, Rabbi Isaac Elchanan Theological Seminary, Community Service Division, Cantorial Training Institute, Sephardic Studies Program, Yeshiva Program, and Sephardic Community Action Program.

[2] The Employer took the position that the Petitioner and its component bodies, the Faculty Associations of the Belfer Graduate School of Science, the Ferkauf Graduate School of Humanities and Social Sciences, and the Yeshiva College, were formed by supervisory employees of the University thereby taking the organization outside of the definition of a labor organization as stated in the Act. However, it is clear from the record that the Petitioner is an organization "in which employees participate" and which exists for the purpose of bargaining collectively with the Employer. The Petitioner thus meets the definition of "labor organization" set forth in Sec. 2(5) of the Act. Further, it is clear that the Petitioner was organized primarily by faculty found, infra, to be nonsupervisory employees. The participation in the organizational effort by three principal investigators, found to be supervisors, infra, does not remove Petitioner from the definition of a labor organization in light of substantial employee participation in the Petitioner. Directors Guild of America, Inc. (Association of Motion Picture & Television Producers, Inc.), 198 NLRB No. 103 (1972). We also note that questions relating to showing of interest are not litigable in representation proceedings. Tappan Division of Tappan Incorporated, 193 NLRB 989 (1971).

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The Yeshiva University Faculty Association herein referred to as the Petitioner or YUFA seeks to represent a unit including all faculty appointed to the University in the titles of professor, associate professor, assistant professor, instructor with a full-time teaching load or the equivalent, excluding part-time faculty, lecturers, faculty of the Albert Einstein College of Medicine, the Sue Golding Graduate School of Medical Sciences, the Yeshiva High School, the Rabbi Isaac Elchanan Theological Seminary, the Cantorial Training Institute, the Community Service Division, the Sephardic Community Activities Program, the James Striar School, the Teachers Institute for Women, and the Sephardic Studies Program, librarians, research associates, research assistants, visiting faculty whose employment at the University is for a fixed 1-year period and who are faculty members at another academic institution, emeritus faculty who are not actively engaged in teaching at the University, faculty whose initial and subsequent appointment is subject to special funding derived in the main from nonuniversity funds, deans and acting deans, directors, the Registrar, and other officers of the University.3/

3/ At the close of the hearing, the Petitioner indicated that it did not seek to represent faculty at the University's Teachers Institute for Women, herein referred to as Teachers, inasmuch as the professors at Teachers labeled "full-time" by the University do not hold faculty appointments but are actually part-time faculty.

The Employer initially takes the position that all faculty members of the University are managerial or supervisory personnel and are therefore not employees within the meaning of the Act. In the alternative, the Employer seeks a unit of all full-time and regular part-time faculty members.[4/] The Employer would exclude from this unit as managerial and/or supervisory, department chairmen and their concomitants, members of the University's committee on academic priorities and resource allocation and the faculty review committee, assistant deans, principal investigators of research and training grants, faculty who have as of date of the election, received notice that their appointment will be terminated or will not be renewed, have notified the University that they intend to resign, or have reached the University's mandatory retirement age. The Employer would not exclude, as would the Petitioner, full-time faculty whose appointments are subject to funding from research grants or from other nonuniversity sources, faculty with the rank of "lecturer," and faculty at Teachers. The Employer does not disagree with the other exclusions sought by the Petitioner.

In contending that no faculty bargaining unit can be appropriate because all faculty members---by virtue of their group participation in faculty governance---are supervisory or managerial and are, thereby, not employees within the meaning of the Act, the Employer requests that the Board reconsider its previous decisions on this issue.[5/] The Employer urges, further, that, in any event, the Board reach

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[4/] Under the University's definition, part-time (that is, half the normal full-time load of 12 hours) would include the faculty members teaching at least 6 hours in the semester in which the election is held and in both semesters of the preceding 3 academic years.

[5/] *Northeastern University*, 218 NLRB No. 40 (1975); *University of Miami*, 213 NLRB No. 64 (1974); *Adelphi University*, 195 NLRB 639 (1972); *Fordham University*, 193 NLRB 134 (1971); and *C. W. Post Center of Long Island University*, 189 NLRB 904 (1971).

a contrary result herein on the ground that this particular faculty has authority which is different from and more extensive than the authority vested in the faculties which were the subjects of the earlier cases.

We find from our examination of the record, however, that the role and authority of the faculty herein with respect to hiring, promotion, salary increases, the granting of tenure, and other areas of governance are not significantly different from what they were in the cited cases,[6] wherein the same arguments were rejected. At Yeshiva University, faculty participation in collegial decision making is on a collective rather than individual basis, it is exercised in the faculty's own interest rather than "in the interest of the employer,"[7] and final authority rests with the board of trustees. As in the earlier decisions, we find that the faculty members are professional employees under the Act who are entitled to vote for or against collective-bargaining representation.

Unit Composition

Part-time faculty: The Petitioner would exclude, while the Employer would include, part-time faculty members. For the reasons set forth in our decisions in *New York University*, *supra*,[8] and *University of San Francisco*, 207 NLRB 12 (1973), we shall exclude part-time faculty from the bargaining unit found appropriate herein.[9]

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[6] See fn. 5, *supra*. See also *New York University*, 205 NLRB 4 (1973).

[7] Sec. 2(11) of the Act.

[8] The Employer argues that application of the factors relied on by the Board in *New York University* requires the inclusion of regular half-time faculty members here. However, while there is some involvement of part-time faculty in issues of curriculum and standards in the Jewish Studies Programs, for the most part the part-time faculty, by both regulation and practice, play a significantly lesser role in student and faculty affairs at the University than do full-time faculty. The record herein amply demonstrates a lack of mutuality of interest between the part-time and full-time faculty at Yeshiva University similar to that requiring exclusion of part-time faculty in *New York University* and *University of San Francisco*.

[9] The record indicates that there are currently no faculty members at Teachers holding full-time appointments with the University; rather the faculty listed by Teachers as teaching a full 12-hour load are, in fact, part-time faculty (continued)

Members of committee on academic priorities and resource allocation and faculty review committee: The Employer contends that members of these committees have substantial managerial and supervisory powers and must, therefore, be excluded from the unit. The record, however, demonstrates that the faculty members on each of the two committees are *elected by the faculty* and serve as representatives of the faculty rather than of management. As we have found, *supra*, authority exercised by the faculty as a group on the basis of collective discussion and consensus is not sufficient to render the individual members of such group supervisors within the meaning of the Act.[10] We therefore find that the several members of the two above-named committees are not supervisory or managerial representatives of the University, and we shall include them in the bargaining unit.

Department chairmen, division chairmen, and senior faculty: The Employer contends that the department chairmen and their concomitants are managerial and/or supervisory employees and, as such, must be excluded from the bargaining unit. The Petitioner asserts that the department chairmen and senior faculty do not qualify as supervisory or managerial and seeks their inclusion in the unit.

As in the *University of Miami, supra*, department chairmen are generally appointed by the dean of their school or college, after consultation with the departmental faculty concerned—whose recommendation is usually, although not always, followed. Indeed, at Belfer, Revel, Ferkauf, and Yeshiva College, the department or division chairmen are actually *elected* by the faculty of their respective departments or divisions. Further, department chairmen have been subject to recall several times by their faculty membership.

9/ without University appointment. Accordingly, such part-time faculty members are not eligible to vote in the election. However, as there is no basis for excluding from the unit any full-time faculty members at Teachers should any such University appointments be made in the future, faculty at Teachers holding full-time appointments with the University will be included in the unit. As the faculty in the title "lecturer" work part-time, employees in that classification are excluded from the unit as part-time employees.

[10] *Adelphi University*, 195 NLRB 639, 648 (1972); *C. W. Post Center of Long Island University, supra*.

The chairmen have regular faculty appointments and teach classes. It appears from the record that they do not receive any extra pay or stipend as chairmen, but they do have their teaching obligations somewhat reduced in many cases.

Belfer's Dean Komar testified that department chairmen at Belfer recommend faculty salaries to the dean but such salaries are subject to approval by the vice president of the University, and individual faculty members can and have gone directly to the president of the University to adjust the recommended figures. The recommendations, arrived at by a consensus of the department members, as to hiring, firing, or granting tenure are relayed through the chairmen.

The dean at Erna Michael testified that when a new faculty member is needed, he approaches the "senior professor," if there is one for the subject area involved, or a number of other faculty people if there is no senior professor, and asks if they know of anyone. Another source is letters or requests for positions received by the dean or "any other of the well-known members of the faculty." According to the dean's testimony, if a particular application looks good or if a faculty member has someone in mind, the dean asks the faculty member to interview the person in question; about 50 percent of the time the dean also participates in the initial paper screening and sometimes participates in the interviews.

Rabbi Besdin, Director of Striar, testified that the two department charimen were chosen with the consensus of faculty and that other faculty, as well as department chairmen, may play a consultative role regarding hiring.

The testimony of Dean Gittler of Ferkauf indicates that recommendations on hiring come from the consensus of the department through the chairman.

Wurzweiler has no "chairmen" or "senior professors." The Employer argues that the convenors, the chairman of the admissions committee, the field instruction coordinator, and the chairman of the doctoral committee perform many of the supervisory and managerial duties of the school. The record indicates that the primary duties of these personnel involve, respectively, coordination of teaching approaches in each division, direction of students' admission, selection of social agencies for placement of students (a responsibility delegated by the faculty), and establishment of requirements for the doctorate degree.

Rabbi Landman of Revel testified that the department chairman's recommendations on the hiring of full-time and part-time faculty members appear to be arrived at by consensus of the department faculty.

The testimony of Dean Mirsky of Stern indicates that he has consulted with Stern's chairmen and generally obtained the approval of the department chairmen before submitting recommendations to the president with regard to the hiring of new employees and the reappointment of faculty. Dean Mirsky has, however, acted contrary to a department chairman's recommendation, and the chairmen do not have the authority to effectuate a reappointment denied by the dean.

According to Dean Bacon of Yeshiva College, the division chairmen, who are elected by the faculty of the particular division, make up the advisory council to the dean. Collectively they deliberate and recommend, through the chairman of the division involved, action on such matters as promotions and sabbaticals. The senior faculty at Yeshiva College, faculty members with the most seniority in each subject area,[11] review applicants for faculty positions and recommend the most outstanding to Dean Bacon, who makes an independent review of the applicants' qualifications before referring such recommendations to the president.

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[11] The subject areas at Yeshiva College are organized in broad "divisions."

As with the final authority to appoint and reappoint, exclusive authority for the granting of tenure is vested in the president. The record does not indicate that department chairmen play a significant role in this process. The departments at Belfer collectively make tenure recommendations which Dean Komar passes on to the president; the dean at Wurzweiler, individually, makes the recommendations to the president. At Ferkauf, a council of all tenured faculty considers award of tenure, but the dean chairs the council and retains, and has exercised, veto power over its recommendations.

The Board has considered many factors in determining whether department chairmen should be included in a unit of faculty. One of the crucial factors is the role of the chairmen in faculty personnel decisions such as hiring, firing, and other changes of status. In appropriate cases where the chairman's authority has been effectively diffused among the department faculty pursuant to the principle of collegiality, the Board has included the chairmen.[12/] The record in the present case demonstrates that the department chairmen, division chairmen, and senior faculty at Yeshiva fall within this qualification.

On the record before us, it appears that, although they have certain formal responsibilities with respect to decisions on such matters as appointment, promotion, and tenure, the department chairmen and their concomitants act primarily as instruments of the faculty in these matters. The department chairmen, in these respects, therefore stand largely on the same footing as the faculty, from whom they receive their authorit[illegible] major recommendations, including hiring, appear to be done on a collegial [illegible] Further, as previously noted, the department chairmen at Yeshiva receive no additional remuneration for assuming the position of chairman.

[12/] Northeastern University, supra.

Accordingly, we find that the department chairmen, division chairmen, and senior faculty are neither supervisors nor managerial employees and shall include them in the unit.[13]

Assistant deans: The Petitioner seeks to include in the unit the two assistant deans, Patt at Belfer and Wischnitzer at Yeshiva College. The Employer would exclude them as supervisory and/or managerial. It does not appear from the record that they are ever delegated the supervisory authority possessed by the deans under whom they serve.[14]

Both of the assistant deans hold faculty appointments, are paid in the faculty classifications, and fulfill teaching responsibilities within the academic departments with which they are affiliated. Further, the assistant dean at Belfer has been elected by the faculty to serve as faculty representative on several committees.

Based on the foregoing we find that the assistant deans are neither supervisors nor managerial employees.[15] Accordingly, we shall include them in the bargaining unit herein.[16]

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[13] *Northeastern University*, *supra*; *Fordham University*, 214 NLRB No. 137 (1974); *University of Miami*, *supra*; *New York University*, *supra*.

[14] Although Dean Komar testified that Assistant Dean Patt "replaces" him during Komar's absences, there is no testimony indicating that during such time Patt was empowered to make any determinations with regard to hiring, firing, promotions, tenure, or any other change in status or to exercise any other supervisory or managerial function.

[15] *University of Miami*, *supra*.

[16] Chairman Murphy is of the view that the record in this case is insufficient to make a determination as to whether the assistant deans are supervisors within the meaning of the Act. Accordingly, the Chairman would vote the two assistant deans by challenged ballot.

__Terminal faculty members:__ As noted, __supra__, the Employer seeks to exclude faculty resignees, terminees, and retirees.[17] Petitioner seeks inclusion of these faculty members. The Employer, recognizing that in previous university cases the Board has uniformly included such employees in faculty bargaining units,[18] urges the Board to reconsider its holding on this issue. After due consideration, we have decided to adhere to our longstanding position with regard to terminal employees, since while their employment continues they have a substantial community of interest with their colleagues. Therefore, faculty members who have received notice that their appointments will be terminated or will not be renewed, have notified the University that they intend to resign, or have reached the University's mandatory retirement age will be eligible to vote in the election herein provided that they are still employed as faculty members at the time of the election.

__Principal investigators:__ The Petitioner seeks to include in the unit principal investigators. The Employer argues that they possess supervisory and managerial authority and must be excluded.

Principal investigators are faculty members who prepare grant proposals and administer the projects once funds have been awarded by government or private agencies. The principal investigator is responsible, subject only to approval of the deans and University administration, for the hiring of full-time and part-time members of the Yeshiva faculty, research associates, research assistants, clerical and other support personnal for work on his project. The record shows that the principal investigator prepares the budget for a grant and sets salaries within broad University guidelines. The record also demonstrates that the principal investigators have the authority to reprimand and terminate the services of all grant employees. Day-to-day supervision of grant employees is also carried out solely by the principal investigator.19/ The principal investigator adjusts the complaints and grievances of the grant employees.

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[17] Upon notice of resignation or termination, the full-time faculty member is expected to continue his employment through and until the end of the academic year. Further, terminations may be appealed, and a faculty member may continue beyond the retirement age on a year-to-year basis with the president's permission.

[18] See __Fordham University__, __supra__; __New York University__, __supra__; __Manhattan College__, 195 NLRB 65 (1972).

As in *Northeastern University, supra*, all of the employees who work on grants and contracts under the direction of a principal investigator are employees of the University and not of the granting agency. These employees are paid by Yeshiva and receive the fringe benefits available to other employees. Yeshiva makes payroll deductions for grant employees similar to the deductions made for other employees.

In the instant case, as in *Rensselaer Polytechnic Institute*,20/ the employees supervised by the principal investigators are employees of the University, and, therefore, the principal investigators herein are supervisors in their relationship to their Employer.21/ Therefore, we find them to be supervisors within the meaning of the Act and exclude them from the unit found appropriate herein.

Full-time faculty whose appointment is subject to special funding and derived from non-University funds: Contrary to the Employer, the Petitioner would exclude the two faculty members who have been hired primarily to perform research activities under a research grant.

19/ While it is difficult to determine the amount of time actually spent by the principal investigators in grant supervision, the University allocates 50 percent of a principal investigator's time for administration of grants. Further, testimony indicates that "absolutely more than half of the time" has been spent by a principal investigator in the supervision of nonunit employees.

20/ 218 NLRB No. 220 (1975).

21/ In *Fordham, supra*, and *New York University, supra*, the principal investigators were found not to be supervisors in their relationship to their employers and were included in the unit. However, in both cases, the employees hired by them were not and did not become employees of the university.

Although listed by the University as full-time faculty (one under the title "Research Assistant Professor") neither of the two faculty members in this category have appointment letters from the president, and they are ineligible for tenure, sabbatical leave, or other perquisites enjoyed by full-time faculty. Further, it appears that their salaries are determined under the grant proposals upon which their employment is dependent.

Under these circumstances, it appears that these two faculty members whose appointment is subject to special funding have a community of interest with the research associates and research assistants, stipulated out of the unit by the parties, rather than with the appointed full-time faculty herein. Accordingly, we shall exclude them from the unit.

In accordance with the above, we find that the following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time faculty members appointed to the University in the titles of professor, associate professor, assistant professor, instructor, or any adjunct or visting thereof, department chairmen, division chairmen, senior faculty and assistant deans, but excluding faculty at Albert Einstein College of Medicine, Sue Golding Graduate School of Medical Sciences, Yeshiva High School, Rabbi Isaac Elchanan Theological Seminary, Cantorial Training Institute, Community Service Division, and Sephardic Community Activities Program; part-time faculty; lecturers; principal investigators; deans, acting deans and directors; faculty whose initial and subsequent appointment is subject to special funding derived in the main from non-University funds or whose initial or subsequent appointment is in connection with special projects; the Registrar; visting professors (with effective faculty appointments at other academic institutions); librarians; research assistants; research associates; emeritus faculty not actively engaged in teaching at the University; officers of the University; all other administrative and support personnel; guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 30 days from the date below. The Regional Director for Region 2 shall direct and supervise the election, subject to the National Labor Relations Board Rules, Series 8, as amended. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period; employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.[22] Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by Yeshiva University Faculty Association.

Dated, Washington, D.C. DEC 5 1975

Betty Southard Murphy, Chairman

Howard Jenkins, Jr., Member

John A. Penello, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

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[22] In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 2 within 7 days of the date of this Decision and Direction of Election. The Regional Director shall make this list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

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FORM NLRB-760
(5-72)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

YESHIVA UNIVERSITY

Employer

and

YESHIVA UNIVERSITY FACULTY ASSOCIATION

Petitioner

Case No. 2-RC-1[illegible]662 | Date Filed 10/30/74

Date Issued December 20, 1975

Type of Election
(Check one)
☐ Stipulation
☒ Board Direction
☐ Consent Agreement
☐ RD Direction
Incumbent Union (Code)

(If applicable check either or both)
☐ 8(b) (7)
☒ Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 152
2. Void ballots 3
3. Votes cast for PETITIONER 91
4. ~~Votes cast for~~
5. ~~Votes cast for~~
6. Votes cast against participating labor organization(~~s~~) 50
7. Valid votes counted (sum of 3, ~~4, 5~~, and 6) 141
8. Challenged ballots 6
9. Valid votes counted plus challenged ballots (sum of 7 and 8) 147
10. Challenges are (not) sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (item 9) has (~~not~~) been cast for PETITIONER

For the Regional Director
C P Chaet

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For EMPLOYER
without prejudice to legal positions maintained

For PETITIONER
Ralph E [illegible]

For

For

U.S. GOVERNMENT PRINTING OFFICE: [illegible]

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RC-RM-RD

FORM NLRB-4279
(3-73)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

YESHIVA UNIVERSITY

Employer

and

YESHIVA UNIVERSITY FACULTY ASSOCIATION

Petitioner

TYPE OF ELECTION
(Check one)
☐ Consent Agreement
☐ Stipulation
☒ Board Direction
☐ RD Direction

(Also check box below where appropriate)
☐ 8(b)(7)

Case No. 2-RC-16662

CERTIFICATION OF REPRESENTATIVE

An election having been conducted in the above matter under the supervision of the Regional Director of the National Labor Relations Board in accordance with the Rules and Regulations of the Board; and it appearing from the Tally of Ballots that a collective bargaining representative has been selected; and no objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefor;

Pursuant to authority vested in the undersigned by the National Labor Relations Board, IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for YESHIVA UNIVERSITY FACULTY ASSOCIATION

and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

UNIT:

SEE ATTACHMENT

Signed at NEW YORK, NEW YORK
On the 30th day of DECEMBER 19 75

On behalf of
NATIONAL LABOR RELATIONS BOARD

Winifred D. Morio

Regional Director, Region 2
National Labor Relations Board

GPO [illegible]

INCLUDED: All full-time faculty members appointed to the University in the titles of professor, associate professor, assistant professor, instructor, or any adjunct or visiting thereof, department chairmen, division chairmen, senior faculty and assistant deans who were employed by the Employer.

EXCLUDED: Faculty at Albert Einstein College of Medicine, Sue Golding Graduate School of Medical Sciences, Yeshiva High School, Rabbi Isaac Elchanan Theological Seminary, Cantorial Training Institute, Community Service Division, and Sephardic Community Activities Program; part-time faculty; lecturers; principal investigators; deans, acting deans and directors; faculty whose initial and subsequent appointment is subject to special funding derived in the main from non-University funds or whose initial or subsequent appointment is in connection with special projects; the Registrar; visiting professors (with effective faculty appointments at other academic institutions); librarians; research assistants; research associates; emeritus faculty not actively engaged in teaching at the University; officers of the University; all other administrative and support personnel; guards, and supervisors as defined in the Act.

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ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

FILED
Exec. Sec.

YESHIVA UNIVERSITY

and

YESHIVA UNIVERSITY
FACULTY ASSOCIATION

Case No. 2-CA-14697

FURTHER PETITION FOR SUMMARY JUDGMENT AND DECISION AND ORDER

The undersigned, Counsel for the General Counsel, National Labor Relations Board, Region 2, respectfully requests leave to further show and allege the following which was inadvertently omitted from the Petition for Summary Judgment and Decision and Order:

1. On January 5, 1977, YUFA requested Respondent to bargain collectively with it as the exclusive bargaining representative of Respondent's employees in the unit described in paragraph 7 of the Petition for Summary Judgment and Decision and Order, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of such employees. A copy of the letter sent to Respondent by YUFA by certified mail, return receipt requested, in which YUFA made the aforesaid request, is attached hereto as Exhibit K. A copy of the receipt for certified mail and return receipt is attached hereto as Exhibit L.

2. To date YUFA has received no reply from the Respondent to its request described above in paragraph 1.

3. On December 27, 1976, before YUFA made its request described above in paragraph 1, Respondent, by its president, Norman Lamm, expressed its intention to obtain judicial review of the Certification described in paragraph 6 of the Petition for Summary Judgment and Decision and Order. A copy of a letter sent by Respondent expressing the aforesaid intention is attached hereto as Exhibit M.

Dated: March 30, 1977

Respectfully submitted,

Rochelle Kentov

Rochelle Kentov
Counsel for the General Counsel
National Labor Relations Board
Region 2
26 Federal Plaza, Room 3614
New York, New York 10007

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JPM

FILE
Exec. Sec. 0

231 NLRB No. 98

D--2484
New York, N.Y.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

YESHIVA UNIVERSITY

and

YESHIVA UNIVERSITY FACULTY ASSOCIATION

Case 2--CA--14697

DECISION AND ORDER

Upon a charge filed on February 4, 1977, by Yeshiva University Faculty Association, herein called the Union, and duly served on Yeshiva University, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 2, issued a complaint and notice of hearing on February 22, 1977, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an Administrative Law Judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on or about December 29, 1976, following a Board election in Case 2--RC--16662 the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about January 7, 1977, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On March 7, 1977, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On March 21, 1977, and on April 1, 1977, respectively, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment and issuance of Decision and Order and a further petition for summary judgment and Decision and Order. Subsequently, on April 8, 1977, the Respondent filed a statement in opposition to petition for summary judgment. On April 12, 1977, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to Notice To Show Cause entitled "Further Statement in Opposition to Petition for Summary Judgment and Response to Notice To Show Cause."

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

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[1] Official notice is taken of the record in the representation proceeding, Case 2--RC--16662, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (C.A. 4, 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (C.A. 5, 1969); *Intertype Co.* v. *Penello*, 269 F.Supp. 573 (D.C.Va., 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (C.A. 7, 1968); Sec. 9(d) of the NLRA, as amended.

Ruling on the Motion for Summary Judgment

In its answer to the complaint, opposition to the Motion for Summary Judgment, and response to the Notice To Show Cause, the Respondent essentially attacks the Board's unit determination in the underlying representation case and, accordingly, the validity of the certification of the Union as the exclusive bargaining representative of the employees in that unit. The General Counsel contends, in effect, that the denials and affirmative defenses set forth in the Respondent's answer raise no issues which have not been litigated and determined by the Board in the prior representation proceeding, Case 2--RC--16662, and that there are no issues requiring a hearing. We agree with the General Counsel.

Our review of the record herein, including that in the representation proceeding, Case 2--RC--16662, shows that, following a hearing before a Board Hearing Officer on the status of certain faculty personnel, the case was transferred to the Board for decision. Respondent and the Union filed with the Board briefs in support of their respective positions. On December 5, 1975, the Board issued a Decision and Direction of Election[2] in which it concluded, inter alia, that the unit consisting of all full-time faculty members, excluding part-time faculty and certain other faculty classifications, was appropriate, as they were neither supervisors nor managerial employees but professional employees. Accordingly, the Board directed an election in that unit. An election by mail and manual balloting was conducted between November 16 and December 20, 1976. A majority of the eligible voters cast ballots for the Union and, in the absence of objections to conduct affecting the election results, the Union was certified by the Regional Director on December 29, 1976.

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[2] 221 NLRB 1053.

In its submissions, Respondent contends that the Board's Decision and Direction of Election disregarded uncontroverted evidence, countenanced abnormally high supervisory ratios, applied an unjustified "ultimate authority" and "shared responsibility" rationale and a baseless quantitative 50-percent test to the qualitative definition of supervisor embodied in Section 2(11), and ignored the principles dealing with managerial employees enunciated in Textron,[3] in ruling, inter alia, that all full-time faculty members, department chairmen and related titles, committee members and other miscellaneous supervisors are not managerial or supervisory personnel under Section 2(11) but are professional employees under Section 2(12) of the Act. Further, Respondent alleges that, by permitting the participation of supervisory and managerial personnel in the election, the Board itself destroyed the laboratory conditions thereof; that the Board allowed the extent of organization to be controlling when it excluded regular part-time faculty members from the appropriate bargaining unit in violation of Section 9(c)(5) of the Act; that by so excluding the regular part-time faculty members without first conducting a rulemaking proceeding pursuant to the Administrative Procedure Act the Board violated its obligations under that act; and that the Board abused its discretion by including terminal faculty members in the bargaining unit. We find no merit in these contentions.

Except for the contention that the Board should have engaged in rulemaking before excluding from the unit regular part-time faculty, Respondent is attempting to raise again and relitigate issues which were, or could have been, raised and litigated in the representation case[4] and this it may not do. Further, we find no merit in Respondent's contention that the Board contravened the Administrative Procedure Act by excluding regular part-time faculty members from the appropriate unit without first conducting a rulemaking proceeding pursuant thereto. It is well established that adjudicated cases may serve as precedent, and that the Board may apply those precedents[5] to the parties in an adjudicatory proceeding.[6]

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[3] N.L.R.B. v. Bell Aerospace Company, Division of Textron, Inc., 416 U.S. 267 (1974).

[4] The Board found that the arguments raised by Respondent in the representation case proceeding were similar to those considered and rejected by the Board in

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[7]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.[8] We shall, accordingly, grant the Motion for Summary Judgment.

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[4] several earlier decisions. *Northeastern University*, 218 NLRB 247 (1975); *University of Miami*, 213 NLRB 634 (1974); *New York University*, 205 NLRB 4 (1973); *Adelphi University*, 195 NLRB 639 (1972); *Fordham University*, 193 NLRB 134 (1971); *C. W. Post Center of Long Island University*, 189 NLRB 904 (1971); *Yeshiva University*, 221 NLRB 1053, 1054, fns. 5 and 6 (1975).

[5] *New York University, supra*, and *University of San Francisco*, 207 NLRB 12 (1973).

[6] *N.L.R.B. v. Wyman-Gordon Co., et al.*, 394 U.S. 759 (1969).

[7] See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

[8] Respondent has denied the allegations of the complaint concerning the request and refusal to bargain. Attached to the General Counsel's further petition are Exhs. K, L, and M which show that by letter dated January 5, 1977, received on January 7, 1977, the Union requested Respondent to bargain

(continued)

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of the Respondent

Respondent is a private institution of higher education chartered under the State of New York. It maintains offices and educational facilities in the city and State of New York, Borough of Manhattan. During the past year, a representative period, Respondent derived gross revenues from its operations in excess of $1 million from sources other than donations and restricted contributions, of which amounts in excess of $50,000 were derived directly from sources located outside the State of New York.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Yeshiva University Faculty Association is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

8/ and that previously, by letter dated December 27, 1976, Respondent expressed its intention to obtain legal review of the Union's certification in the courts. The contents of these exhibits which are uncontroverted establish, and the Board finds, that on January 7, 1977, the Union requested and Respondent refused to bargain. See Paramount General Hospital, Inc., 223 NLRB 1017, 1019, fn. 8 (1976).

All full-time faculty members appointed to the University in the titles of professor, associate professor, assistant professor, instructor, or any adjunct or visiting thereof, department chairmen, division chairmen, senior faculty and assistant deans who are employed by the Employer at its Campus, exclusive of faculty at Albert Einstein College of Medicine, Sue Golding Graduate School of Medical Sciences, Yeshiva High School, Rabbi Isaac Elchanan Theological Seminary, Cantorial Training Institute, Community Service Division, and Sephardic Community Activities Program; part-time faculty; lecturers; principal investigators; deans, acting deans and directors; faculty whose initial and subsequent appointment is subject to special funding derived in the main from non-University funds or whose initial or subsequent appointment is in connection with special projects; the Registrar; visiting professors (with effective faculty appointments at other academic institutions); librarians; research assistants; research associates; emeritus faculty not actively engaged in teaching at the University; officers of the University; all other administrative and support personnel; guards, and all supervisors as defined in Section 2(11) of the Act.

2. The certification

On December 20, 1976, a majority of the employees of Respondent in said unit, in a secret ballot election conducted under the supervision of the Regional Director for Region 2, designated the Union as their representative for the purpose of collective bargaining with Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on December 29, 1976, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about January 7, 1977, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about January 7, 1977, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.[9]

Accordingly, we find that Respondent has, since January 7, 1977, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized

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[9] See fn. 8, *supra*.

bargaining representative in the appropriate unit. See Ma[illegible] Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (C.A. 5, 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (C.A. 10, 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Yeshiva University is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Yeshiva University Faculty Association is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time faculty members appointed to the University in the titles of professor, associate professor, assistant professor, instructor, or any adjunct or visiting thereof, department chairmen, division chairmen, senior faculty and assistant deans who are employed by the Employer at its Campus, exclusive of faculty at Albert Einstein College of Medicine, Sue Golding Graudate School of Medical Sciences, Yeshiva High School, Rabbi Isaac Elchanan Theological Seminary, Cantorial Training Institute, Community Service Division, and Sephardic Community Activities Program; part-time faculty; lecturers; principal investigators; deans, acting deans and directors; faculty whose initial and subsequent appointment is subject to special funding derived in the main from non-University funds or whose initial or subsequent appointment is in connection with special projects; the Registrar; visiting professors (with effective faculty appointments at other academic institutions); librarians;

research assistants; research associates; emeritus faculty not actively engaged in teaching at the University; officers of the University; all other administrative and support personnel; guards, and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since December 29, 1976, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about January 7, 1977, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Yeshiva University, New York, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Yeshiva University Faculty Association as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time faculty members appointed to the University in the titles of professor, associate professor, assistant professor, instructor, or any adjunct or visiting thereof, department chairmen, division chairmen, senior faculty and assistant deans who are employed by the Employer at its Campus, exclusive of faculty at Albert Einstein College of Medicine, Sue Golding Graduate School of Medical Sciences, Yeshiva High School, Rabbi Isaac Elchanan Theological Seminary. Cantorial Training Institute, Community Service Division, and Sephardic Community Activities Program; part-time faculty; lecturers; principal investigators; deans, acting deans and directors; faculty whose initial and subsequent appointment is subject to special funding derived in the main from non-University funds or whose initial or subsequent appointment is in connection with special projects; the Registrar; visiting professors (with effective faculty appointments at other academic institutions); librarians; research assistants; research associates; emeritus faculty not actively engaged in teaching at the University; officers of the University; all other administrative and support personnel; guards, and all supervisors as defined in Section 2(11) of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its offices and educational facilities in New York, New York, copies of the attached notice marked "Appendix."[10/] Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. August 24, 1977

Howard Jenkins, Jr., Member

John A. Penello, Member

Betty Southard Murphy, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

[10/] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Yeshiva University Faculty Association as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All full-time faculty members appointed to the University in the titles of professor, associate professor, assistant professor, instructor, or, any adjunct or visiting thereof, department chairmen, division chairmen, senior faculty and assistant deans who are employed by the Employer at its Campus, exclusive of faculty at Albert Einstein College of Medicine, Sue Golding Graduate School of Medical Sciences, Yeshiva High School, Rabbi Isaac Elchanan Theological Seminary, Cantorial Training Institute, Community Service Division, and Sephardic Community Activities Program; part-time faculty; lecturers; principal investigators; deans, acting deans and directors; faculty whose initial and subsequent appointment is subject to special funding derived in the main from non-University funds or whose initial or subsequent appointment is in connection with special projects; the Registrar; visiting professors (with effective faculty appointments at other academic institutions); librarians; research assistants; research associates; emeritus faculty not actively engaged in teaching at the University; officers of the University; all other administrative and support

personnel; guards, and all supervisors as defined in Section 2(11) of the Act.

YESHIVA UNIVERSITY
(Employer)

Dated ______________________ By ______________________________________
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 36th Floor—Federal Building, 26 Federal Plaza, New York, New York 10007, Telephone 212—264—0360.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SECOND REGION

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In the Matter of :

YESHIVA UNIVERSITY - BELFER GRADUATE SCHOOL : Case No. 2-RC-16518
and
FACULTY ASSOCIATION OF BELFER GRADUATE :
SCHOOL OF SCIENCE
:

- x
:

YESHIVA UNIVERSITY - FERKAUF GRADUATE SCHOOL
and : Case No. 2-RC-16517
FACULTY ASSOCIATION OF FERKAUF GRADUATE SCHOOL
OF HUMANITIES AND SOCIAL SCIENCES. :

---x

26 Federal Plaza
New York, New York
Monday, June 10, 1974

The above-entitled matter came on for hearing, pursuant to notice, at 10:45 o'clock, a.m.

BEFORE: HAYWOOD E. BANKS,

Hearing Officer.

APPEARANCES:

SAUL G. KRAMER, ESQ.	PROSKAUER, ROSE, GOETZ & MENDELSOHN, ESQS., 300 Park Avenue, New York, New York, appearing on behalf of the Employer.
RONALD SCHECTMAN, ESQ.	MURRAY A. GORDON, P.C., 666 Third Avenue, New York, New York, appearing on behalf of Petitioners.

MR. KRAMER: Dr. Fishman, please.

JOSHUA A. FISHMAN, called as a witness, having been first duly sworn by the Hearing Officer, testified as follows:

THE HEARING OFFICER: Be seated and give the reporter your full name and address, please.

THE WITNESS: Joshua A. Fishman, 3340 Bainbridge Avenue, Bronx, New York.

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DIRECT EXAMINATION

BY MR. KRAMER:

Q Dr. Fishman, by whom are you employed?

A I'm employed by Yeshiva University.

Q In what capacity?

A I'm Vice-President for Academic Affairs.

Q How long have you held that position, Dr. Fishman?

A Since September 1973.

Q Would you tell us what are your responsbilities as Vice-President for Academic Affairs?

A I have overall integrating responsibility with respect to the programs of instruction, the degree programs, the quality of those programs, quality of the faculty, the merit of the faculty with respect to promotion, tenure.

Q Would it be fair to state, putting the president of the institution aside, Dr. Fishman, that you are the chief academic officer of the university?

A Yes.

Q How long have you been associated with the university?

A I have been at Yeshiva University since 1960.

Q In what capacity, beginning in 1960 and coming forward?

A From 1960 to 1966, my faculty appointment was professor of psychology, and then psychology and sociology, but most of my time was spent as dean of the school, which ultimately became the Ferkauf Graduate School.

I also was engaged in research probably half of the time during those six years.

From 1966 through to 1973, I was university research professor of social sciences engaged both in teaching and in research, and since September 1973, although I retain my academic rank, I've also assumed this administrative responsibility.

Q Now, Dr. Fishman, would you outline for the Board what you did prior to 1960?

A From 1958 to 1960 I was at the University of Pennsylvania as associate professor of psychology and human relations and research director of the Albert M. Greenfield Center for Human Relations.

From 1955 to 1958 I was research associate through to director of research for the College Entrance

Examination Board.

From 1954, '55, I had a post doctoral fellowship at Columbia University.

From approximately 1948 to 1954, I was research assistant and senior research associate for the Jewish Education Committee of New York.

That's about my --

Q Where did you take your undergraduate degree, Dr. Fishman?

A At the University of Pennsylvania, both my bachelor's and my master's degree.

Q In what field was the bachelor and the master?

A They were both in a field which there is called social science.

Q The doctorate?

A In social psychology at Columbia University.

Q Dr. Fishman, when was Yeshiva University chartered by the State of New York?

A In 1897.

Q Dr. Fishman, I show you a document of several pages, the top page of which is headed "The University of the State of New York, the State Education Department." It appears to be a letter under date of May 29, 1974.

Are you familiar with this document, which is marked as Employee's Exhibit No. 1?

A Yes. This document is the charter of the University, as amended and updated on various occasions.

(Employee's Exhibit 1 was marked for identification.)

MR. KRAMER: I offer Employee's Exhibit No. 1 in evidence.

THE HEARING OFFICER: Any objection?

MR. SCHECTMAN: No objection.

THE HEARING OFFICER: All right. Employee's Exhibit 1 is received in evidence.

(Employee's Exhibit 1 for identification was received in evidence.)

Q Dr. Fishman, does the university have a board of trustees?

A Yes, sir.

Q Is there any requirement that the members of the Board of Trustees maintain a particular religious affiliation?

A No, there is no such requirement.

Q Now, Dr. Fishman, you have been in various educational pursuits for over 20 years, is that right?

A Yes.

Q Would you tell us, based on your experience, what the term university means?

A A university is a large post secondary educational institution normally offering a great variety of degree

Certainly the self-evaluation around that theme was conducted by faculty committees and, therefore, although I wasn't present at the time, I would say by university tradition that's the way it would have been done.

Q Dr. Fishman, I've used the term full-time faculty in my opening statement. Is that term used at Yeshiva University?

A Full-time faculty? Yes.

Q Would you tell us what that term means?

A A full-time faculty member is a faculty member whose letter of appointment from the President states that he is a full-time faculty member.

He, therefore, either is on a tenure track or has been on a tenure track in accordance with our tenure policy which pertains to full-time faculty, and his -- the university has every right to expect that all of his time is given to the university and, therefore, there are regulations limiting the amount of time that he can give outside of the university.

That time given outside the university is either related to a portion of his faculty teaching load, it can be no more — if he is teaching outside of the university, it can be no more than half of the normal faculty teaching load, or if he is doing non-teaching work outside the university, it can be no more than the equivalent of a day of such work per week, and the permission to do any work outside of the university must be requested from one's dean, who must then request it from the President, and the permission can be given only by the President.

Q Now, is there also a quantitative test in determining whether someone is a full-time faculty member?

A The quantitative test is in the definition of the full-time load that I mentioned before. The full-time load at the university is defined as four courses, around 12 contact hours, or the equivalent thereof in other duties, committee work, dissertation, supervision, and so forth.

Q Is that four courses per semester?

A No, no. Per year.

Q Is that a graduate requirement?

A The graduate requirement and the undergraduate requirement are somewhat different, but they are essentially that, either four courses or 12 contact hours.

Q Who established that requirement, Dr. Fishman?

A That requirement was established by the Executive Council approximately in the spring of 1970.

Q Approximately how many full-time faculty members were employed at Yeshiva University at the beginning of the fall semester '73?

A So far --

Q We are excluding the medical school here, Dr. Fishman.

A Full-time faculty members, approximately 225.

Q And approximately how many students were enrolled at the university, excluding the medical school, both full and part-time?

A Full and part-time students., approximately 2500.

Q Now, approximately how many of these students were full-time?

A There were 1500 full-time students.

Q And of these full-time, how many were full-time graduate students?

A Full-time graduate students, 336.

Q And full-time undergraduate students?

A Full-time undergraduate students, about 1200.

Q Of the part-time students, how many were part-time graduate students?

A Part-time graduate students were about 680.

Q And part-time undergraduate students?

A Part-time undergraduate students were about 340.

Q Dr. Fishman, would you tell us what schools make up the university?

A There are the following: Yeshiva College, Stern for Women, the Erna Michael College, the James Striar

School, the Teachers Institute for Women, the Belfer School, the Ferkauf School, the Wurzweiler School, the Bernard Revel School and its summer program called the Harry Fischel School.

I believe I've got them all.

Q Is there also a medical school, Dr. Fishman?

A Yes, there is also the Albert Einstein College of Medicine and its Sue Golding Division.

Q And finally, Dr. Fishman, is there a putative law school?

A There is a law school currently planned as a result of a charter amendment that was recently granted by the Regents, yes.

Q What will that law school be called?

A Benjamin Cardoza Law School.

Q And the charter amendment covering the law school is in evidence as part of Employee's Exhibit 1, is it not?

A Yes.

MR. KRAMER: Off the record.

THE HEARING OFFICER: Off the record.

(Discussion off the record.)

THE HEARING OFFICER: On the record.

At this time we will adjourn and return at 1 p.m.

(Whereupon, at 12 noon, a luncheon recess was taken.)

AFTERNOON SESSION

JOSHUA A. FISHMAN, resumed the stand and testified further as follows:

THE HEARING OFFICER: The hearing will be in order.

CONTINUED DIRECT EXAMINATION

BY MR. KRAMER:

Q I think before the luncheon break, Dr. Fishman, you told us that a full-time load was 12 contact hours or four courses, and I asked you whether those were four courses per semester or per year, and you told us that they were four courses per year, academic year; is that correct?

A Per semester.

Q You would like to correct your testimony?

A Yes, sir.

Q The 12 contact hours are per semester, also?

A Yes.

Q Dr. Fishman, prior to the lunch break, I asked you how the theme for the Middle States Evaluation was established. Have you had an opportunity to think about that some more?

A The theme was established as soon as -- by discussion between the Middle States Association and the University, and it was broken into several sub themes, by discussion between the Middle States representative and University personnel into integration in the area of finances, programs, the university's graduate programs in physics, mathematics and chemistry. It conducts the university's undergraduate programs in physics and in mathematics and is planning to do the same for chemistry with the beginning of the next year.

Q Does it also provide what we call B.A.-M.S. programs?

A It is involved in joint B.A.-M.S. programs with the university's undergraduate colleges, the Yeshiva College and Stern College, in these same three fields, in physics, chemistry and mathematics.

Q Doctor, would you tell the hearing officer what a B.S.-M.S. program is, or for that matter, what a B.A.-M.A. program is in another discipline curriculum?

A Bachelors Masters Program is a device whereby an undergraduate senior can in his senior year take courses, the credits for which will simultaneously count toward his undergraduate degree, his Bachelors Degree, and toward a Masters Degree.

That is, he receives credits ~~in~~ both directions simultaneously.

Q Are such programs currently in effect in chemistry, physics and mathematics?

A Yes.

Q Do you know how those programs came into being?

A   Yes.

Q   Tell us about that, would you please?

A   In every case, since the faculty offering advance science work is doing its work through the Belfer School, the faculty in the graduate departments took the initiative in requesting and in planning and in implementing these programs.

Q   Planning them with whom?

A   The faculties in the other schools where there is course work corresponding to the programs in chemistry, physics and mathematics.

Q   Are there in existence today joint committees between the faculties of the undergraduate and the Belfer School in these program areas, math, chemistry and physics?

A   Yes, joint committees to operate these programs, plan them, to operate them, to improve them.

(Employer's Exhibit 3 was marked for identification.)

Q   Doctor Fishman, I show you Employer's Exhibit 3 for identification, a document entitled, "Yeshiva University, Officer of the Registrar, Graduate Credit for Undergraduates".

Are you familiar with this document?

A   Yes.

Q   From where was it taken, Dr. Fishman?

A   This is from the documents in the Office of the Registrar,

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This is a letter under date of April 17, 1974, from you, Dr. Fishman, to Dorothy G. Harrison, Director of the State Education Department. Is this your response?

A Yes.

Q You note in the middle of this paragraph: "We are already quite far advanced in bringing about a unification and improvement of our graduate and undergraduate chemistry departments."

You told that to Dr. Harrison, did you not?

A Yes.

Q What did you mean by that?

A The evaluating team had commented in its report on what I considered to be a description of the state of affairs at the moment and was not reacting, and I felt perhaps erroneously not reacting to all of the planning that had been started in advance of their coming, in fact, had started some time in September of October. As soon as I showed up at the university and the chairman of the Chemistry Department came to see me, he said we had to plan for an integrated university Chemistry Department, and that planning began by convening the various units that offer work in chemistry so that joint planning for a unified Chemistry Department could get underway, and by the time the visitors came in February, there had been November, graduate education and undergraduate education?

A As you can see from Dr. Harrison's one paragraph addendum on page 2 of her letter of May third -- which is Employer's Exhibit Number 9 -- she mentions that she spoke to me -- she called on the phone after she received my letter and said it wasn't sufficient merely to say that all of these things were under way, that there should be as much detail documentation of what the Chemistry Department was suggesting and planning as possible.

Since Dr. Pomerantz had drawn up a report about that, which was being discussed between all the chemistry faculties, I asked him to please send it into Dr. Harrison, and she also spoke on the phone to him and asked him to send it in.

Q Was such a detailed report sent to Dr. Harrison?

A It was.

(Employer's Exhibit 10 was marked for identification.)

Q I show you Employer's Exhibit 10 marked for identification, a document dated March 6, 1974, which appears to be a letter to Dr. Dorothy G. Harrison, Director, State Education Department, Albany, New York, from you, J.A. Fishman.

Did you, in fact, send that letter?

A Yes.

Q Did you, in fact, accompany it with the documentation

Q Do undergraduate students take graduate courses at Ferkauf outside of BA-MA programs?

A On occasion that will happen, yes.

Q And does the Ferkauf School participate in BA-MA programs?

A Yes. Several BA-MA programs involve the Ferkauf School.

Q Would you tell us about that, Dr. Fishman?

A The Ferkauf School is involved in BA-MA programs in psychology and experimental sociology and educational psychology, both with Yeshiva College and with Stern College.

MR. SCHECTMAN: Excuse me. Is the witness reading from something?

MR. KRAMER: Yes. He is looking at Exhibit No. 3, which is in evidence in this proceedings.

THE WITNESS: I happened not to be at that moment.

A (Continuing) Ferkauf is involved in a BA-MA program in Jewish education. I don't remember at the moment whether it is MA or MS, but it is a bachelor-master's program in Jewish education, together with the ERna Michael College and Stern College.

It's involved in a general education program, BA-MS I suspect with Stern College.

Q These programs to which you've just referred, Dr. Fishman, are further described, are they not, on page 2 of Employer's Exhibit 3 in evidence?

A Yes.

Q Dr. Fishman, how are these joint BA-MA programs developed?

A They were developed as a result of joint faculty committees, planned them, submitted them for approval.

Q When you say joint faculty committees, would you tell the Hearing Officer what you mean?

A Committees of the schools involved. If it involves Ferkauf and Stern, that would be a committee of faculty members of those two schools.

Q And having established those programs, have committees been continued to monitor their progress?

A Yes, committees responsible for the progress of those programs, again, joint committees of the school involved.

Q What function, if any, do members of the psychology faculty at the Ferkauf School play with repect with undergraduate psychology courses in education at Stern and Yeshiva College?

A Since psychology is one of those fields which exist both at Ferkauf and at the two undergraduate colleges, faculty members based at Ferkauf have for many years had responsibility for teaching in psychology both at Yeshiva College and at Stern College.

Q Dr. Fishman, during 1974 has consideratian been given to physically moving the primary situs of the Ferkauf psychology department from the graduate center to the main center?

A Yes. There was consideration given to that in the context of consideration that is being given to moving the entire graduate center to the uptown center, to the main center.

Q During 1974, Dr. Fishman, was a committee established for the university-wide articulation of psychology programs?

A Yes, there was.

Q And in the idiom of your university, what is the meaning of the term articulation? What's its common meaning?

A The meaning of articulation is to pull it together and unify it, to coordinate it, so it doesn't operate as separate fragmentary units.

Q On or about February 5, 1974, did you receive a letter from Professor Norman B. Gordon, Chairman of the Department of Psychology of the Ferkauf School?

A Yes.

MR. SCHECTMAN: What is that date?

MR. KRAMER: On or about February 5, 1974.

Q (By Mr. Kramer) Was that letter written for the department of psychology?

A On behalf of, yes, the department of psychology.

Q What was the subject of that letter, Dr. Fishman?

A   Dr. Gordon wanted to explain to me in detail why it was that he and his colleagues were so eager to have the psychology department be relocated at the uptown or main campus of the university, so that they could thereby have stronger roots in the undergraduate college, in terms of teaching, and so that the undergraduate instruction could be further improved.

Q   Is such a move under consideration?

A   Such a move is under consideration.

MR. KRAMER: Would you mark this, please?

(A document was marked Employer's Exhibit No. 15, for identification.)

Q   (By Mr. Kramer) Dr. Fishman, I show you Employer's Exhibit 15, a letter of three pages under date of February 5, 1974, to you from Norman B. Gordon, Chairman for the department of psychology.

Is this the letter to which you refer?

A   Yes, sir.

Q   And in this letter, Dr. Professor Gordon suggests that the move from the graduate center to the main center would integrate his department, and I quote now, "in a number of positive ways with undergraduate programs and thus result in even greater gains than just a money-saving move to utilize a building."

Did he suggest that?

A Yes.

Q Did he suggest, "that part of such a move might lead to establishment of an all university integration of psychology programs at the undergraduate, subdoctoral and graduate level"?

A Yes.

MR. KRAMER: I'll offer Employer's Exhibit 15.

MR. SCHECTMAN: No objection.

HEARING OFFICER: Employer's Exhibit 15 is received in evidence.

(The document previously marked Employer's Exhibit 15, for identification, was received in evidence)

Q (By Mr. Kramer) In addition, Dr. Fishman, to the February 5, 1974 letter to you, did Professor Gordon, once again on behalf of his department, also write to Dean Joseph B. Gittler on this subject?

A YEs.

Q Did you receive a copy of that letter?

A Yes.

Q Was that on or about —-

A A memorandum, was it?

Q I stand corrected.

Did you get a copy of that memorandum?

A Yes.

Q And was it under date of February 7, 1974?

MR. KRAMER: I offer Employer's Exhibit 18 in evidence.

MR. SCHECTMAN: No objection.

HEARING OFFICER: Employer's Exhibit 18 is received in evidence.

(The document previously marked Employer's Exhibit 18, for identification, was received in evidence)

Q (By Mr. Kramer) Now, I note in the second paragraph of this letter it states that, "A number of planning committees will need to be appointed, some of them within schools and some of them between schools, to deal with matters such as the foregoing which can be grounded under four broad rubericks:

A, planning an academic facilities, B, planning student and faculty services, C, planning general academic work and activities, D, planning Jewish academic work and activities."

You then continued, Dr. Fishman --

MR. SCHECTMAN: Excuse me, Mr. Hearing Officer. I object.

MR. KRAMER: I will not read any further from the exhibit at this point.

Q (By Mr. Kramer) Were these committees in fact formed?

A Some committees were formed. Some were not.

Q In which areas were committees formed?

A A committee was formed for space planning, planning of space, the physical facilities planning in connection with the consolidation or in connection with a consolidation, and a committee considered also the academic planning that was necessary in connection with consolidation of campuses.

MR. SCHECHMAN: I'm sorry. Could I have that response read back. I missed it.

HEARING OFFICER: Okay.

(The record was read by the reporter)

Q Now, Dr. Fishman, you've told us about several BA-MA programs between Ferkauf College and various undergraduate schools in the university.

To your knowledge, has there also been planning for a BA-MA program in general education between the Ferkauf School and Yeshiva College?

A There was planning for that, yes. There is no such program in effect, but there was planning of such a program.

Q And why is no such program in effect at this time, if you know?

A Teaching doesn't seem to be a favorite professional goal of the boys in Yeshiva College. There just doesn't seem to be sufficient student interest in that field.

But on the chance that there would be, such a program was planned.

Q And who did the planning Dr. Fishman?

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A The planning was done primarily by the Ferkauf faculty with the few people at the college that have in the past, when there was interest in teacher education at the college, conducted courses in that area.

Q And when did this planning take place, as best you recall?

A That planning was done at the end of '72-73 academic year, the beginning of the '73-74 academic year.

Q And by a committee?

A Yes.

Q And was that an interscholastic faculty committee?

A Interschool committee.

(A document was marked Exmployer's Exhibit 19 for identification.)

Q (By Mr. Kramer) Dr. Fishman, I show you Employer's Exhibit marked 19 for identification, a three-page document, the first page of which under the logo The Yeshiva University, has the title "Members of the committee for the BA-MA in education," and the next two pages which are headed, at least on the second page by the following: Minutes of Meeting of subcommittee on university bachelor-masters programs."

Is this the joint BA-MA committee in education to which you have just referred?

A Yes. That's the committee that planned that program between Ferkauf and Yeshiva College.

Q And these are minutes of that committee?

A Yes.

Q Taken from your file?

A Yes.

MR. KRAMER: I offer Employer's Exhibit 19 in evidence.

MR. SCHECTMAN: No objection.

HEARING OFFICER: Employer's Exhibit 19 is received in evidence.

(The document previously marked Employer's Exhibit 19, for identification, was received in evidence)

Q (By Mr. Kramer) Now, Dr. Fishman, is there currently under way interschool planning for the continuation or revision of the masters program in communications at the Ferkauf Graduate School?

A Yes. There is a joint planning committee for a new masters level program in communications.

Q This committee consists of a faculty fromthe Ferkauf Graduate School, is that right?

A Yes.

Q From the Stern College for women?

A Yes.

Q And from Yeshiva College, is that right?

A Yes.

A There were about 20 faculty members.

Q Does the Wurzweiler School participate in a joint BA-MSW program?

A Yes.

Q With what other college faculties, Dr. Fishman?

A It has a joint program together with the Erna Michael School and Yeshiva College.

Q How is that program developed, Dr. Fishman?

A It was developed under the leadership of the Wurzweiler faculty jointly with faculty in the other two colleges.

Q Now, let's turn to the Bernard Revel and Fischel schools. What is their role?

A Those schools offer graduate work in what I would call non-theological Jewish studies, Jewish history, Jewish philosophy, Hebrew language and literature, other cognate languages of the near East, both at the masters and doctorallevels, offering programs both at the masters and doctoral levels.

Q Approximately how many students are enrolled at the Revel and Fischel schools?

A The enrollment at the Bernard Revel School was about 150 in the fall.

Q Would you break that down between full and part time students, Dr. Fishman?

A There were some 20 full time students and some 130 part time students.

Q Approximately how many full time faculty members are based at Revel and Fischel?

A There are about 10 full time faculty members at those two schools.

MR. SCHECTMAN: To clarify the record, was the response with respect to the number of schools at Revel, did that Fischel as well?

THE WITNESS: The figures that I gave are for the fall. The Fischel operates only in the summer so those students did not include Fischel students that would be registered only in the summer.

Q (By Mr. Kramer) Approximately how many students would you have in the Fischel program in the summer?

A To the best of my knowledge, it would be some 60 to 80 students.

Q Approximately how many full time faculty, roughly?

A It's the same faculty.

Q Dr. Fishman, does the Bernard Revel faculty participate in a joint BA-MA Program in Jewish studies?

A Yes. There is a joint BA-MA program in Jewish studies between Bernard Revel, Yeshiva College, Erna Michael College and Stern College.

Q And how was that program developed, Dr. Fishman?

A It was developed by a faculty committee, drawing on the faculties of those colleges.

Q And is there a committee in existence to monitor the operation of that program?

A Yes, there is.

Q Is this an interschool committee?

A An interschool committee between those four schools.

Q I show you Employer's Exhibit 3 in evidence, and more particularly the item "Jewish Studies," under Roman No. IV on page 2.

Is this the BA-MA program to which you just referred?

A Yes, sir.

Q Dr. Fishman, you have testified at one time or another in this proceeding, I take it, to all of the BA-MA programs listed on page 2?

A Yes. I think they've all been mentioned now.

Q Dr. Fishman, does the university have official catalogs?

A Yes, sertainly.

MR. KRAMER: Would you mark these, please?

(A group of catalogs were marked Employer's Exhibits Nos. 22A thru 22E, for identification.)

Q (By Mr. Kramer) Dr. Fishman, I show you Employer's Exhibit 22A entitled "Yeshiva University, Undergraduate

HEARING OFFICER: All right. Employer's Exhibit 28 is received evidence.

(The document previously marked Employer's Exhibit 28, for identification, was received in evidence.)

Q (By Mr. Kramer) Dr. Fishman, there are several members of the Belfer faculty listed on Employer's Exhibit 28.

Next year will even more undergraduate courses be taught by the Belfer faculty?

A Yes, sir.

Q How is this to come about?

A It comes about as a result of the planning for university wide chemistry operation that we were discussing yesterday.

And, therefore, there will be more undergraduate chemistry then before taught by faculty members, based at Belfer.

Q Now, Dr. Fishman, you have talked about certain BA and MA programs, certain BA-MS programs and a BA-MSW program, all of which you told us require interschool coordination.

Do there also exist university wide interschool committees whichdeal with various academic matters?

A Yes.

Q Might these also be called subcommittees?

A Could be subcommittees or committees.

Q Are they in fact university wide committees on the articulation of mathematics, physics, psychology, sociology, statistics, eduation, communications and Judaic studies?

A There are committees on all of those fields, yes.

Q Now, in preparation for this case and at my request have you had prepared rosters of each of these faculty committees?

A Yes, sir.

Q They are faculty committees, are they not?

A They are faculty committees.

Q And does each roster show the base appointment of the faculty member involved?

A Yes, sir.

(A document was marked Employer's Exhibit 29, for identification.)

Q (By Mr. Kramer) I show you Employer's Exhibit 29, marked for identification.

Would you tell us what this exhibit is?

A This is the committee concerned with mathematics and physics instruction at the university.

Q Well, would you refer to the entire exhibit, Dr.

received in evidence.

(Page 1, Employer's Exhibit 29, received in evidence.)

Q Now, Dr. Fishman, let us turn for a moment to the governance of the university.

You told us that the ultimate governing body is the board of trustees; is that correct?

A Yes.

Q Is that so for the entire university?

A Yes.

Q For all schools?

A Yes.

Q And who is the chief executive officer of the university?

A The president.

Q Are there vice presidents serving under him?

A Yes.

Q What are their titles, Dr. Fishman?

A Vice president for student affairs; vice president for business affairs. There is a vice president for academic affairs.

Q And that is the same vice president for student affairs for all of the schools?

A Yes.

Q And the same vice president of academic affairs for all of the schools?

A Yes.

Q And the same vice president for business affairs for all of the schools; is that correct?

A Yes. With the college of medicine excepted.

MR. KRAMER: We ought to note for the record that unless we say otherwise, we are not dealing with the college of medicine.

It is my understanding that it is not petitioned for.

MR. SCHECTMAN: It is my understanding that the university has stipulated that it will not be considered as patt of the corporate unit.

MR. KRAMER: I don't know that we stipulated to that effect. We assume that the board would so conclude.

Q Is there also a body called the board of governors of the graduate school?

A Graduate schools.

Q Is that an advisory body or a governing body?

A It is an advisory body to the board of trustees.

Q Who created the board of governors of the graduate school?

A It was created by the board of trustees.

Q Would that be in or about February of 1973?

A About a year and a half ago.

Q Is there any reference to the board of trustees in the charter -- strike that.

Is there any reference to the board of governors of the graduate school in the university's charger and enabling documents?

A Yes.

Q By "enabling documents," Dr. Fishman, I mean all the amendments to the charter.

A Yes.

Q I take it there is no such reference?

A Yes.

Q Those are in evidence, are they not, as Employer's Exhibit 1 in this proceeding?

A Yes.

Q Does the board of governors have a role in development?

A That is the major role of the board of governors of the graduate schools, to help in fund-raising for the university.

Q Is that what the development is called in the university parlance?

A Yes.

Q Has the board of governors the authority to hire anyone or fire anyone?

A No.

Q To establish any wages, hours or working conditions?

A No.

Q Or to direct the establishment of any wages, hours or working conditions?

A No.

Q To remove any of the officers or professors of the university?

A No.

Q Or any other members of its faculty?

A No.

Q Now, putting aside the advisory board of governors of the graduate schools that we have just discussed, is there in addition to the board of trustees of the university a university executive council?

A Yes.

Q And would you tell us who makes up the executive council?

A The executive council consists of the deans of the various schools, the directors of the various divisions of the university, whether they be academic divisions or other divisions.

Q Are they elected, Dr. Fishman, or are they appointed?

A Appointed. You mean to office or this committee?

Q To the committee.

A They are appointed to the committee.

Q For that matter, Dr. Fishman, are there elected officers or appointed officers?

A To my knowledge all of these officers are appointed. I know they are all appointed to the committee.

Q Appointed to the committee by whom?

A The president.

Q Appointed to office by whom?

A The president.

Q With the concurrence of the board of trustees of the university; is that correct?

A Yes.

Q What is the function, or what are the functions, of the executive council?

A The executive council meets frequently, normally twice a month, to share all of the academic and administrative problems of the university, to be sure that all deans and directors are aware of what is occurring, and what is of concern to any part of the university.

Q As matters stood during the academic year 1973-74, Dr. Fishman, did the executive council issue instructions or directives to the administration of the university?

A The executive council is primarily a recommending body, it discusses issues that are brought to it by responsible authorities anywhere in the university, and then recommends to them, but essentially to the president who then issues directives.

Q I see.

Now, in addition to the executive council are there also elected councils at the university?

A Yes.

Q How many of them are there?

A There is the graduate council, there is the undergraduate council, various elected committess. I am not sure if you are referring to them.

Q There is the graduate council?

A Yes.

Q And there is the undergraduate council?

A Yes.

Q Now, let's turn to the graduate council for a moment.

Would you tell us how that council is constituted?

A That council consists of elected student and elected faculty representatives from each of the graduate schools, as well as a number of appointed administrative officers throughout the university.

MR. KRAMER: Will you mark this Employer's Exhibit 48 for identification.

HEARING OFFICER: Mark it Employer's Exhibit 48 for identification.

(Employer's Exhibit 48 marked for identification.)

Q I show you a document entitled "Membership List, Academic Council of the Graduate Schools of Yeshiva University." Was this list prepared by someone under your supervision and control?

A Yes.

Q To the best of your knowledge is this list correct?

A Yes.

Q And this list includes both faculty and students, does it not?

A Yes, their names and addresses.

Q It is entitled "Academic Council of the Graduate Schools, Yeshiva University." Is the correct title for this organization "Graduate Council"?

A We call it the graduate council. I am not sure whether the official name is acadmic council of the graduate schools, or the graduate council.

Q The official name would be in the faculty handbook, would it not?

A Yes.

MR. KRAMER: I offer Employer's Exhibit 48 in evidence.

MR. SCHECTMAN: No objection.

HEARING OFFICER: Employer's Exhibit 48 is received in evidence.

(Employer's Exhibit 48 received in evidence.)

Q Mr. Fishman, you told us that there is also an undergraduate council; is that correct?

A Yes.

MR. KRAMER: Will you mark this Employer's Exhibit 49 for identification.

HEARING OFFICER: Mark it Employer's Exhibit 49 for identification.

(Employer's Exhibit 49 marked for identification.)

Q I show you Employer's Exhibit 49 for identification, a document that purports to be a list of undergraduate council 1973-74.

Is this in fact such a list?

A Yes.

Q How is the undergraduate council constituted?

A The faculty and student representatives are elected from the undergraduate schools, and the administratie representatives are appointed.

Q I see you sit on this council, Dr. Fishman.

A Yes.

Q I see that you, referring to Employer's Exhibit 48, also sit on the graduate council.

A Yes.

Q Is that correct?

A Yes.

Q That there are essentially administrative personnel in addition to yourself on both councils?

A Yes.

Q Turning a moment to Employer's Exhibit 49, the first line says "This is the list of undergraduate council as given to me by the 1973-74 secretary."

Was this list in fact given to you by the secretary of this council, the 1973-74?

A Yes.

Q   Is it correct to the best of your knowledge?

A   Yes, it is.

MR. KRAMER: I offer Employer's Exhibit 49 in evidence.

HEARING OFFICER: It will be received in evidence.

(Employer's Exhibit 49 received in evidence.)

Q   Dr. Fishman, will you tell us what the function of the graduate council is supposed to be?

A   The purpose of the graduate council is to enable graduate faculty and students and university administrators normally to be concerned with the problems that they all face together, common problems to the graduate level. It could be problems from any level of the university that have graduate level consequences, have implications for graduate students or graduate faculty.

Q   Is the subject of integration with the undergraduate programs a subject for the graduate council?

A   It certainly wold be a subject that they would be concerned with.

Q   Will you tell us what the function of the undergraduate council is?

A   Similarly, the undergraduate council is concerned with whatever issues are common to undergraduate faculty and undergraduate students, and that arise anywhere in the university and have implications for undergraduate instruction.

Q   Would the subject of integration with the graduate schools, graduate faculty, for that matter graduate students, be a subject for the undergraduate council?

A Wes, it was been the subject.

Q It has been the subject?

A Yes.

Q At meetings you have attended?

A Yes.

Q Now, you have referred in addition to these two elected councils, Dr. Fishman, to an appointed council called the executive council, have you not?

A Will you repeat the question?

MR. KRAMER: Repeat the question.

(Question read.)

A Yes.

MR. KRAMER: Will you mark this Employer's Exhibit 50 for identification.

HERING OFFICER: Mark it Employer's Exhibit 50 for identification.

(Employer's Exhibit 50 marked for identification.)

Q Dr. Fishman, I show you Employer's Exhibit 50 for identification, a document entitled, "Yeshiva University, Members of the Executive Council, 1974-75."

Is this a roster of the executive council?

A Yes.

Q Is it in any significant respect different from what in question had been inadvertently left off the list, have you made such check during the break?

A Yes, I found three names that need to be added.

Q Will you give us those names, Dr. Fishman?

A For the 72-73 academic year, Edward Levy of Yeshiva College taught Music 1 at Stern College.

During the 73-74 academic year, Maurice Chernowitz taught Art 1.1.

Leo Taubes taught English 1.1

MR. SCHECTMAN: They are all Yeshiva College?

THE WITNESS: Yes.

MR. KRAMER: Mr. Reporter, can I have the last question before the break read back?

(Record read.)

Q Dr. Fishman, is the executive counsel and are the graduate councils and undergraduate councils referred to in a document called "Faculty Handbook"?

A Yes.

MR. KRAMER: Will you mark this Employer's Exhibit 51 for identification.

HEARING OFFICER: Mark it Employer's Exhibit 51 for identification.

(Employer's Exhibit 51 marked for identification.)

Q Dr. Fishman, I show you Employer's Exhibit 51 marked for identification, a document entitled "Faculty Handboork." Is this in fact the faculty handbook?

A Yes.

Q And except as otherwise noted within the book itself, does this handbook cover the entire faculty of Yeshiva University?

A Yes.

Q On May 20, 1974, was an amendment promulgated to this handbook?

A Yes.

Q That amendment is not in the form, is it, for insertion into this book?

A No.

MR. KRAMER: For the record, there is what they call a split binding on this book.

Q Is that right?

A Yes.

Q This amdndment is by memo, I take it; is that right?

A The revision of the handbook to which that memo refers is in the handbook. The memo is a notification to the deans to please point out that revision to the faculty so that they make appropriate changes in the handbook.

Q Just so the record is clear, the revision contained in the memo which you just referred to is,that printed in some way in Employer's Exhibit 41 that is marked for identification?

A The revision in the tenure policies in the handbook, Q Is that appropriate correction embodied in Employer's Exhibit 51?

A No.

When the tenure statement was changed, a new page of the handbook was distributed for insertion. But that change has implication to the second section that you are now referring to, the faculty load section.

So this memo asks the people to do it by hand.

Q The faculty load section of the handbook is found on page 7 of Employer's Exhibit 51?

A Yes.

Q And it is modified by Employer's Exhibit 52; is that correct?

A Yes.

MR. KRAMER: I offer Employer's Exhibits 51 and 52 in evidence.

MR. SCHECTMAN: No objection.

HEARING OFFICER: Employer's Exhibit 51 and 52 are received in evidence.

(Employer's Exhibits 51 and 52 received in evidence.)

Q Now, Dr. Fishman, the handbook which is in evidence as Employer's Exhibit 51 as amended by Employer's Exhibit 52 makes reference to a faculty -- a university faculty review committee.

Are you familiar with that committee?

A Yes.

Q Will you tell us what the functions of the university faculty review committee are?

A It is a university-wide grievance committee to which any faculty grievance could be brought, but its primary function is for the review of grievances pertaining to non-promotion, a faculty member who has not been promoted for a long period of time, I believe it is ten years, can appeal to the grievance committee automatically, automatically has his case reviewed by the grievance committee.

But a faculty member not promoted at any time, or not given tenure at any time, can bring his grievance to the grievance committee.

Q How is this grievance committee constituted?

A The grievance committee consists of elected representatives of the various schools.

Q When you say of the various schools, do you mean all of the schools?

A All of the schools.

Q In other words, it is a fact, then, Dr. Fishman, that undergraduate faculty, that is, faculty having their base appointments in undergraduate schools, actually sit on the grievances filed by graduate faculty?

A Yes.

Q And of course vice versa?

A Yes.

Q Does the university faculty review committee have prodedural bylaws?

A I really don't know.

MR. KRAMER: Will you mark this Employer's Exhibit 53 for identification.

HEARING OFFICER: Mark it Employer's Exhibit 52 for identification.

(Employer's Exhibit 52 marked for identification.)

Q Is it that you don't know whether the committee has bylaws, or whether the bylaws are called procedural bylaws?

A I didn't realize it had a document called procedural bylaws.

Q You understood that it had bylaws, did you not?

A I understood that it had established ways of functioning.

Q Now, I show you Employer's Exhibit 53 marked for identification, a document entitled "University Faculty Review Committee Procedural Bylaws." Were these bylays drawn from your files?

A Yes. I have files of all the committees.

Q To your knowledge, Dr. Fishman, are these the bylaws of the university faculty review committee?

A This is what I would go to to fidd out how the faculty review committee functions, look it up under faculty review committee, and this is what I would find.

Q This is what you found in your files?

A Yes.

Q Did you have reason to be involved with the faculty review committee during the 1973-74 school year?

A No.

MR. KRAMER: We offer Employer's Exhibit 53 in evidence.

MR. [illegible]CHECTMAN: No objection.

[illegible]NG OFFICER: Employer's Exhibit 53 is received in evidence.

(Employr's Exhibit 53 received in evidence.)

Q Dr. Fishman, has the university faculty review committee actually handled any grievances?

A This year it had a number of informal issues, but it hasn't had any formal grievances to pass upon this year.

Q That is this year, how about in prior years?

A In prior years it has had formal grievances.

Q Has it received grievances from graduate faculty?

A Yes.

Q Do you recall from what schools?

A It has received grievances over the last few years that I recall from Albert Einstein College of Medicine, from the Ferkauf School, and from the Wurtzweiler School. The ones I remember.

Q Members of the faculty in those schools?

A Yes. Faculty members primarily based at those schools.

But a large part of its business is informal, as faculty members will informally check with the chairman as to what does he advise them in connection with the grievance that he has.

Q Do you have any recollection of the names of the faculty members that are involved?

A I don't remember the names, I just remember the schools involved, because it was something I looked up.

MR. KRAMER: Will you mark this Employer's Exhibit 54 for identification.

HEARING OFFICER: Mark it Employer's Exhibit 54 for identification.

(Employer's Exhibit 54 marked for identification.)

Q I show you Exhibit 54 marked for identification. Will you look at it?

A Yes.

Q Does this exhibit refresh your recollection?

A Yes, these are the names that I extracted from the records when I was trying to find out what schools had made use of the faculty review committee.

Q Would you tell the hearing officer the faculty members?

A They are Dr. J.J. Smith at Einstein; Dr. H. Rappaport at Einstein; a Dr. N. Greenberg at Wurtzweiler, and a Dr. S. Simonson at Ferkauf.

MR. KRAMER: I am not going to offer Exhibit 54 for identification, but I will leave it here.

Q Dr. Fishman, in addition to the many committees that you have testified to, and several councils that you have referred to, are there various school committees that deal with various subject matters?

A Yes, there are several such.

Q Would you give us some examples of the kind of school committees that are found in the university?

A Most schools will have a curriculum committee, a promotion committee, depending upon the size of the faculty they will have more or less committees. Most schools will have an admissions committee. Schools might have a standards committee.

Q Does each undergraduate school have committees?

A Yes.

Q Each one has its own set of committees?

A Yes.

Q Stern has them?

A Yes.

Q Yeshiva College has them?

A Yes.

Q Erna Michael has them?

A Yes.

Q And of course each of the graduate schools has its own set of committees, does it not?

A Yes.

Q Now, do each of the undergraduate schools have a set of bylaws, or governance documents?

A Yes.

Q For that matter, one governance in each school?

A There are governance documents for the governance bodies that schools have.

Q That is so in Stern?

A Yes, there is a governance document.

Q There is one for Yeshiva?

A There are actually two such documents.

Q And there are also governance documents in existence for Belfer?

A Yes.

Q And Ferkauf?

A Yes.

Q And the other graduate schools?

A Yes.

Q There is no one single governance document in existence for the undergraduate schools?

A No.

Q And there is no one single governance document for the graduate schools?

A No. Other than the faculty handbook.

Q Which covers all of the schools, all of the university?

A Yes.

Q Now, are you in a general fashion familiar with the Yeshiva College faculty assembly, and the Yeshiva College senate?

A To some extent.

Q Will you describe for us in lay terms, Dr. Fishman, the function of the Yeshiva College faculty assembly and how it is constituted?

A The faculty assembly consists of all full-time faculty members involved in the instruction of Yeshiva College in any particular academic year.

Q That is so regardless of their base appointment?

A Yes.

Q Are members of the Belfer faculty eligible to be members of the faculty assembly at Yeshiva College?

A Those who are teaching undergraduate courses at Yeshiva College in any particular year will be members of the Yeshiva College assembly that year, since most of them are doing so they are most of them members.

Q Just so the record is clear, Dr. Fishman, I show you Employer's Exhibit 41 in evidence, which says, which has the title "Faculty from Other Schools of Yeshiva University Teaching Courses at Yeshiva College," and the first page is numbered 1973-74, and that goes over on to the second page, and on to the third page of this exhibit.

MR. KRAMER: I will offer Employer's Exhibit 55 in evidence.

MR. SCHECTMAN: No objection.

HEARING OFFICER: Exhibit 55 is received.

(Employer's Exhibit 55 received in evidence.)

BY MR. KRAMER:

Q There is also a line-out on page 4 of the exhibit. I would assume that would also represent an amendment?

A It is part of the same section.

Q Dr. Fishman, do similar faculty statutes exist at the other undergraduate schools?

A Yes.

Q And at each of the undergraduate schools?

A Yes.

Q Now, you made reference a few moments ago to a Yeshiva College senate?

A Yes.

Q Can you tell us what the function of that senate is?

A The senate at the college meets more frequently than the assembly, and also has student representatives.

Q And what is its function?

A Its function is to review all ongoing concerns as they occur without appreciable delay, whereas the assembly meets regularly only twice a semester, important affairs, particularly affairs that concern the students, so that they should not be delayed, are brought immediately to the senate.

Q Are members of the faculty who have base appointments in graduate schools who are teaching in Yeshiva College able to run for and serve on the Yeshiva College Senate?

A Yes.

Q Has a Belfer faculty member teaching at Yeshiva College actually run for the Yeshiva College senate?

A In recent times I know of one.

MR. KRAMER: Will you mark this Employer's Exhibit 56 for identification.

HEARING OFFICER: Mark it Employer's Exhibit 56 for identification.

(Employer's Exhibit 56 marked for identification.)

Q I show you Employer's Exhibit 56 marked for identification, a document entitled "Yeshiva University, Yeshiva College, Constitution of Yeshiva College Senate."

A Yes.

Q Is this in fact the Yeshiva College constitution?

A Yes.

MR. KRAMER: I offer Employer's Exhibit 56 in evidence.

MR. SCHECTMAN: No objection.

HEARING OFFICER: Employer's Exhibit 56 is received.

(Employer's Exhibit 56 received in evidence.)

MR. KRAMER: Will you mark this Employer's Exhibit 57 for identification.

AFTERNOON SESSION 2:00 p.m.

HEARING OFFICER: On the record.

The hearing will be in order.

JOSHUA FISHMAN, resumed

BY MR. KRAMER:

Q Dr. Fishman, let's turn for a moment to the departmental structure of the university.

Will you tell us how that is arranged?

A Many schools are organized in terms of departments. Some are not, they are organized in terms of divisions or in terms of programs rather than departments.

Q When a field is taught to both undergraduates and graduates, what is the departmental setup, or setups?

A If a field is taught at both graduate and undergraduate levels, there are normally some structure in each school, maybe a department in one and a division in the other, but then there will be some kind of linking structure so that there will be a relationship between the graduate and the undergraduate instructions.

Some of those structures are older than others, some are quite recent.

The university has been building up those links more and more over time. Most of the programs began, the earliest programs began as undergraduate ones. So therefore when the graduate ones were added,after that links were added between them, between the graduate and undergraduate.

The links are liaison committees or working committees that tie the programs together.

Q Dr. Fishman, let me show you the faculty handbook for a moment, Employer's Exhibit 51 in evidence, and more particularly to page 5 thereof.

I note there references to the executive council, the council of graduate schools, and the council of undergraduate schools.

Are these the councils to which you have already testified?

A Yes.

Q Dr. Fishman, on page 6 there is a reference to faculty appointments. Is it a fact, Dr. Fishman, that most faculty members, regardless whether they are paid on a nine-month, which is a ten-installment, or a 12-installement basis, work nine months a year?

A Yes, that is the ordinary academic year that the faculty teach.

Q And their regular salaries are related to that nine-month period?

A Some of them actually prefer to get paid all of their annual salary in those nine months, others prefer to have it spread out over all twelve months even though they are just teaching the nine months.

Q The full-time work year is nine months?

A Normally.

Q There is in addition, I take it, a summer session?

A Yes.

Q That would require extra payment, would it not?

A Yes.

Q Now, I refer you to page 7, and more particularly to paragraph B on page 7, which states, "Each school within the university will establish for its faculty regulations defining full-time faculty load in continence with its needs and progrms."

Are you familiar with that program?

A Yes.

Q You told us that full-time faculty load is for graduate courses a semester, or 12 undergraduate contact hours a semester; is that correct?

A Yes.

Q That requirement is not stated in paragraph B, is it?

A No.

Q And paragraph B was published, as the page shows, on September 1, 1967?

A Yes.

Q Where does the four-course or 12 credit-hour requirement come from?

A That was a recommendation of the executive council a few years after this, 1971 if I remember the documents I have seen.

Q That is what is in effect at the university today?

A That is the definition which then various schools implemented.

Q Now, turning to page 7, Dr. Fishman, you have referred in your earlier testimony to the university faculty review committee.

A Yes.

Q Is that the committee referred to on that page, page 8?

A Yes, in connection with the policy governing promotions.

Q Dr. Fishman, do you have a function in connection with promotions?

A Yes.

Q Would you tell us what that function is, please?

A All recommendations for promotions finally wind up on my desk. They start out normally in the faculty member's own department where some consensus is reached that he should be recommended for promotion. Department or division, or whatever the unit is.

Normally that then is communicated to the promotion committee of the school, and if that recommendation is seconded by them, or acceptable to them, they so recommend to the dean who normally himself has to second that recommendation, has to approve that recommendation. Then he sends it to me. He sends it to the office of the president, which essentially is my responsibility. That is part of my responsibility.

Q Now, this recommendation comes to you, Dr. Fishman, what functin do you play with respect to these recommendations?

A I evaluate them, I first of all try to make sure that they are phrased in accord with the promotion policy of the school. The school requires certain demonstrated abilities for associate professor, I review the recommendation to see that it refers to those demonstrated qualities. It could be research, a certain level of eminence, proficiency of teaching, university service. Whatever the requirements are, I try to review the recommendations and see whether it comes within those requirements that the school has put on the record as pertaining to that rank.

Then I try to evaluate it further. For example, if the recommendation says that he is a very eminent researcher and is widely known in his field, I would like to see what is the documentation for that. What are the publications, for example. What is the actual evidence that he is a widely known researcher.

In the course of going through these recommendations, therefore it is common for me to have to be in touch with the dean to ask for additional information, or to express problems that I am having in seeing how that recommendation is arrived at.

Q Now, this year, Dr. Fishman, did you in fact have a conversation with Dean Bacon of Yeshiva College about the qualitative aspects of a particular promotion?

A I have had conversations with almost every dean who has recommended every promotion this year in those terms.

Q Did you also have a conversation with Dean Bacon?

A Yes.

Q Without detailing the faculty member's name, unless that is asked for on cross examination, would you tell us what transpired with respect to you and between you and Dean Bacon with respect to this particular promotion this year?

A The conversation -- a conversation that I remember of this kind dealt with the faculty member being promoted to associate professor, or being recommended for promotion to associate professor.

Like most deans, Dean Bacon wanted to be sure that I would understand the recommendation. This is common procedure at the university, that we will informally discuss recommendations even before they are formally made so as to be sure that they are understood, that they are sufficiently well explained, so that they won't run into last minute questions, and so that they don't have to be turned down.

He was briefing me on a recommendation that he was going to make. It appeared from what he said that the faculty member in question had two or three publications in the last several years. I expressed doubt,by their own formulation of requirements for associate professor, two or three publications really was indicative of sufficient research, sufficient scholarly productivity to permit that rank.

Well, it turned out that these publications were books that hadn't been cleared in the way the recommendation was phrased, they were books, which in itself is quite a difference from having two or three journal articles, or two or three books in a few years.

So I then asked would he be kind enough to let me have copies of those books, and he did, and I skimmed one of them and read parts, large parts of another one of them, so as to be able to come to some impression of my own with respect to the substantiation for the recommendation.

Q Was the recommendation submitted to you on a formal basis?

A Yes.

Q Was it subsequently approved by you?

A Yes.

Q Dr. Fishman, I assume that there are areas in the university that are outside of your ken?

A Yes.

Q Do you receive recommendations in those areas?

A Yes.

Q Are you free to consult with faculty both inside and outside the university with respect to the substance of those recommendations?

A Yes.

Q Based on that consultation, do you draw your own conclusions?

A Yes. For recommendations outside of fields that I am familiar with, the deans very frequently include evidence in terms of recommendations from people outside the university as well. So it becomes clear to me that it is not merely sort of an internal routine rubber-stamp promotion, that people in the field itself consider that recommendation to be of merit.

Q Do you have authority to call those people and talk to them?

A Yes, I do.

Q Without your approval, Dr. Fishman, the promotion would not stand?

A That is correct.

Q No, it would not stand?

A No, it would not stand.

Q Is that so whether the school involved is Ferkauf?

A Yes.

Q Or Belfer?

A It is true for Belfer, Ferkauf.

Q Yeshiva College?

A Yes.

Q For all the schools in the university except the medical school; is that correct?

A Yes.

Q Dr. Fishman, you have told us that there is a graduate council and an undergraduate council.

A Yes.

Q During the month of June did the graduate council create a special committee?

A At its last meeting of this academic year in June it recommended the creation of such a special committee.

Q What was the title of this special committee, the name?

A A committee on priorities and planning, or planning and priorities.

Q Does the committee on planning and priorities include solely the graduate council, or would there be a broader base?

A Their recommendation was the entire graduate council and the entire undergraduate council together be constituted a committee on priorities and planning, university committee on priorities and planning.

Q In essence, they sit together?

A That was their recommendation.

Q Was a chairman of this committee appointed?

A They recommended that Sheldon Socol be appointed.

Q What is the purpose of this committee?

MR. SCHECTMAN: I object to the question, that there is no such committee.

Q Dr. Fishman, do you know whether this proposal by the graduate council has been accepted by the undergraduate council?

A I know that it has been accepted, but I also -- but it also has to be brought to the executive council for approval.

Q To your knowledge, Dr. Fishman, is there any reason why this proposal will not be accepted by them?

A There is no reason why it shouldn't be accepted.

Q What will be the purpose of this committee once it is approved by the executive council?

A I can only speak to the recommendation.

Q Would you do so?

A The recommendation is for that committee to review the various needs of the university. These needs each have their own fiscal consequences, and therefore these needs compete with each other for the university's funds.

Therefore, to arrive at an overall plan for priorities in terms of the university's plans across all of the needs of the university, to plan for a long-range approabh to the university's needs, and to set priorities.

Q And this approach to integration and cooperation had its genesis in the graduate council?

A Yes.

Q Let's turn to page 9 of the faculty handbook, Employer's Exhibit 51 in evidence.

MR. KRAMER: Strike that.

Q Dr. Fishman, let's turn to the five pages following page 8, none of which are numbered, which are found in Employer's Exhibit 51 which is in evidence. The first of those pages is headed "Statement of Tenure and Appointment Policy."

Dr. Fishman, are those pages in fact the tenure policy of Yeshiva University with the exclusion of Albert Einstein College of Medicine?

A Yes.

Q Is this the revised tenure policy that you referred to earlier?

A This is the recently revised statement.

Q And it applies throughout the university except for Einstein; is that correct?

A Yes.

Q When changes in the tenure policy have been made, Dr. Fishman, they have been made university-wide; is that correct?

A Yes.

Q Again excepting the medical school?

A Yes.

Q Did there come a time in February, 1974, when the academic deans and directors of the university were asked by you to give further consideration to changes in tenure policy?

A Yes, I did ask them to consider further guidelines with respect to tenure without necessarily saying that it would have to be a change in the tenure policy.

Q If there were a change, however, it would be on a university-wide basis?

A Yes, I approached them all in this connection.

MR. KRAMER: Mark this Employer's Exhibit 58 for identification.

HEARING OFFICER: Mark it Employer's Exhibit 58 for identification.

(Employer's Exhibit 58 marked for identification.)

Q Dr. Fishman, I show you Employer's Exhibit 58, it is a memorandum to academic deans and directors under the date of February 18, 1974, from you, re: further guidelines re tenure.

Is this a memo you sent to all the academic deans and directors?

A Yes.

MR. KRAMER: I offer Employer's Exhibit 58 in evidence.

MR. SCHECTMAN: No objection.

HEARING OFFICER: Employer's Exhibit 58 is received in evidence.

(Employer's Exhibit 58 received in evidence.)

Q Dr. Fishman, on June 11 you testified at some length about the chemistry, university-wide chemistry department being developed at Yeshiva University; is that correct?

A Yes.

Q You also testified about a doctoral review project of the State of New York?

A Yes.

Q I believe the last of the documentation with respect to this review project is Employer's Exhibit 13 in evidence.

A Yes.

Q And that is the letter, is it not, Dr. Fishman, to Dr. Harrison, the director of the office of doctoral project, from President Belkin under date of May 14, 1974?

A Yes.

Q Now, since the last hearing, Dr. Fishman, has the University received a further report from the New York State Education Department Office of Doctoral Review Project, a report about the chemistry graduate teaching function at Belfer?

A Yes.

Q Will you tell us what the report recommended?

A The report from the doctoral project indicated the ratings that were given to all of the doctoral chemistry programs in New York State, and then classified them into clearly acceptable, provisionally acceptable, and unacceptable, and had a few words to say about each of those programs in order to indicate why they were so classified.

Unfortunately, our chemistry program was classified as unacceptable.

Q Did the State make a recommendation about its continuance or discontinuance?

A It recommended a discontinuance of all the unacceptable programs, including our own.

Q That took place about June 17, 1974, did it not?

A Yes.

Q As a result of the receipt of that letter, Dr. Fishman, did you and others in responsible positions at the universtiy go to Albany to discuss the report with Dr. Harrison?

A I and Dr. Socol and Dr. Pomerantz, who is chairman of the graduate chemistry program, and the man who has planned, or been in charge of the planning for chemistry at the university in the future involving both the graduate and undergraduate departments, we went together in order to ask the review committee to reconsider that classification, and to point out why the program should not be classified as unacceptable given all of the palnning that had gone into overcoming exactly those deficiencies they had pointed to.

Q Planning for the development of a university chemistry function and department?

A Yes.

Q Was that emphasized in Albany?

doctoral program in mathematics?

A Yes, it will evaluate all the doctoral programs.

Q Dr. Fishman, you told us about a role you play with respect to promotions, do you also have a role with respect to the granting of tenure?

A Yes.

Q Will you tell us about that role?

A As you will note from that memorandum of mine to all the deans, I am concerned with the balance between tenured and untenured faculty, and therefore when faculty members approach the length of service that brings them close to the time when they would automatically receive tenure were they to continue in their current positions, their current titles, the deans will apprise me of the fact that a decision has to be made as to whether or not these people should be reappointed. Because if they are reappointed, that will automatically provide them with the tenure. Whereas if they are not to be reappointed, the university policy is that they be notified by a certain date, that date being established so as to provide as much time as possible for them to find other positions.

The deans will first call and come and we will discuss the question, and it will normally be decided in terms of the financial capacity of the university to carry another tenured commitment, and the impact on that department, would that mean that given the fact that it is now more and more difficult to add more faculty to the rolls because of financial concerns with even being tenured than a department may not be able to add any more faculty after that if this new person [illegible] talking about would be appointed.

Of course it is not desirable to let him go. On the other hand, you have to weigh the alternatives, is it more desirable to have a new person come in and provide new thought, new experience, new ideas in the department.

So there is the departmental balance, and the schoolwide balance of tenured versus untenured faculty that I am more concerned with. The fiscal issues are taken up with the whole fiscal side of the university planning.

Q Do you attempt to reach agreement with the deans in this area?

A Yes.

Q Have you been able to do so?

A Yes.

Q Dr. Fishman, in the absence of agreement, do you have the authority to deny a tenure recommendation?

A Yes.

Q Dr. Fishman, are you generally familiar with the type of fringe benefits that the university affords full-time faculty?

A Yes, roughly.

Q I am putting aside the medical school for purposes of these questions.

A Yes.

Q Does the university have a pension plan?

A Yes.

Q For all members, full-time members of the faculty?

A Yes.

Q Is the same pension plan available to all of those members of the faculty?

A Yes.

Q Does the university provide full-time faculty with a health insurance and major medical program?

A Yes.

Q Is the same program offered to all full-time members of the faculty?

A Yes.

Q Dr. Fishman, does the university have a tuition remission policy?

A Yes.

Q What do we mean, Dr. Fishman, by tuition remission?

A The university permits close relatives of members of its full-time faculty, for example children of full-time faculty, spouses of full-time faculty, to attend the university at a lower tuition than others. Half of the tuition is remitted, or not charged, or waived for these people.

Q May members of the staff also take courses?

(Employer's Exhibit 59 received in evidence.)

Q Is the same tuition remission policy the same for all schools?

A Yes.

Q Whether graduate or undergraduate?

A Yes.

Q And the regulation that was just placed in evidence as Employer's Exhibit 59,that applies to all schools both graduate and undergraduate?

A Yes.

Q To your knowledge, Dr. Fisman, putting aside the medical school, when changes have been made in the past by the university in any of its fringe benefits, did they apply equally to the faculty in all schools?

A Yes.

Q Does the university have a sabbatical leave program?

A Policy, yes.

Q Is it found in the policy handbook?

A The faculty handbook, yes.

Q Does the same policy apply in all schools?

A Yes.

Q Dr. Fishman, may a sabbatical leave be taken by a faculty member in any of the schools without approval of the central administration of the university?

A No.

Q Dr. Fishman, did there come a time during 1971-72 when there was a financial crisis at the university?

A Yes.

Q Was that so announced for all to hear?

A Yes.

Q At that time were certain sabbatical leaves suspended?

A Policy at that time was altered, yes.

Q Tell us about that.

A At that time, and since that time, the alternatives that are stated in the policy no longer obtain. The policy statement in the faculty handbook provides a faculty member who is granted a sabbatical with the opportunty of chosing between a full year sabbatical at half pay, or a half year's sabbatical paid at the full-time rate.

Since the financial difficulties became as serious as they did, a faculty member is no longer able to choose between those two alternatives. If he applies for a sabbatical, and the sabbatical is granted, he must take a full year's sabbatical at half pay.

Q Has that change been made for all schools in the university?

A Yes.

Q No difference between graduate and undergraduate?

A No difference.

Q Now, Dr. Fishman, is there a mandatory retirement age at Yeshiva University?

A Yes, there is.

Q What is that retirement age?

A It is stated in the faculty handbook. It is age 65. But with the permission of the president on a semester-by-semester basis, faculty members who are so recommended by their deans can be permitted to teach through to the age of 68.

Q Does that also require the approval of the central administration?

A Yes.

Q Is that a university-wide policy on an emeritus status?

A I would call that a university procedure with respect to an emeritus status.

MR. KRAMER: Will you mark this Employer's Exhibit 60 for identification.

HEARING OFFICER: Mark it Employer's Exhibit 60 for identification.

(Employer's Exhibit 60 marked for identification.)

Q Dr. Fishman, I show you Employer's Exhibit 60, a memo from you to deans Bacon, Gittler, Honig, Jaffee, Mirsky, Rosenthal, Green and Vice President Socol, under date of June 5, 1974, under the title "Emeritus Status."

Is this the procedure to which you just referred?

A Yes.

Q And was it in fact distributed?

A Yes.

MR. KRAMER: I offer Employer's Exhibit 60 in evidence.

MR. SCHECTMAN: No objection.

HEARING OFFICER: It will be received, Employer's Exhibit 60 in evidence.

(Employer's Exhibit 60 received in evidence.)

Q Dr. Fishman, are you familiar with the calendars that exist in the university?

A Yes.

Q By that I mean generally.

A Yes.

Q Does each school have a separate calendar?

A Yes.

Q Are those calendars roughly equivalent to each other?

A Roughly the same.

Q You told us in your testimony, Dr. Fishman, that the university has a regulation with respect to outside work by full-time faculty members?

A Yes.

Q Is that policy uniform throughout the university?

A With respect to faculty load and outside employment?

Q Yes.

A Yes.

Q With respect to outside employment, is that policy found in Employer's Exhibit 52?

A Yes.

Q Now, you have told us, Dr. Fishman, that the part of Employer's Exhibit 52 under the heading "Faculty Load" represents a change from the portion of Employer's Exhibit 51, the faculty handbook, dealing with faculty load?

A Yes.

Q What is the substance of that change?

A The substance of the change is the capitalized portion there, approval of the president. Previously outside employment required merely the approval of the dean. With the revised tenure policy,approval of the president for outside employment is now required for a faculty member to maintain his tenured status.

Q Dr. Fishman, you told us a few minutes ago that the chemistry doctoral program is registered with the New York State Education Department?

A Yes.

Q Are any other --

MR. KRAMER: Strike that.

Q Are all other courses at the university, I am not distinguishing between undergraduate and graduate, registered with the New York State Education Department?

A All of the university's programs are registered.

Q I assume a loss of registration would mean a loss of the program?

Q Now, Dr. Fishman, let's turn to the subject of research grants.

Would you explain for us the various types of sponsorship that exists for such research grants?

A Some research is conducted under university sponsorship. Some research is conducted under outside sponsorship. The outside sponsorship may be private foundations, private sources, or public sources, Federal Government, State Government, or other quasi-government support.

Q Now, are such research grante limited to Belfer or Ferkauf faculties?

A No.

Q Are you familiar with the term "principal investigator"?

A Yes.

Q What does that term mean?

A The principal investigator is the person who is in charge of the activity going on in connection with the particular grant.

Q Would it be fair to say that he manages that gran and project?

A He plans it, he runs it, yes. That is his project.

Q Are you now [illegible]pal investigator, Dr. Fishman?

A I am.

Q And when you were a member of the faculty were you a principal investigator?

A Yes.

Q Is it a fact, Dr. Fishman, that most Belfer faculty are principal investigators?

A Yes.

Q And that some of the Ferkauf faculty are?

A Yes.

Q Now, would you outline for us in a general way, Dr. Fishman, the procedure, the procedures that are used in going about obtaining a grant and putting it into effect?

A The faculty member fisst has to have an idea which he considers to be novel, a problem which he considers to be novel or unsolved, and which he believes is of interest to some granting agency so that they would support his work on that problem. He may contact them in a preliminary fashion to find out whether it is true that they are interested, to get their advice with respect to how to draw up an application for them.

He will draw up the application, will get the application forms from them, or from the university office where such forms are available. He will consult with colleagues and people outside the university for advice as to how to put the application, what to include in it, how to formulate it in such a way that it will be most effective.

When he has it written out he will bring it sometimes to a faculty committee at his school that has to approve it.

But most frequently to the dean, who has to approve it, to be sure that the space that such a project would call for and the university services and so forth that it would call for can indeed be made available.

It is then forwarded to the vice president for business affairs for his signature, since someone has to signify that the university takes responsibility for this project were it to be granted.

Assuming that he has passed through all these steps the application is then forwarded before the daadline to the granting agency.

Q On occasion, Dr. Fishman, is the application signed by the dean of the particular school involved?

A That varies from agency to agency, but there are occasion in which the agency requests that the dean sign indicating the approval that I mentioned that has to be obtained.

Q The university approval?

A Yes. Some fiscal officer of the university always has to sign regardless whether the dean signs or not.

Q Now, Dr. Fishman, you have told us that the principal investigator generally formulates the idea for the project; is that correct?

A Yes.

Q Does he also specify the managing for the project?

A Part of the application will indicate the personnel that he anticipates is necessary for that project to proceed. It will include his time, and as many other people as he thinks the granting agency will enable him to hire.

Q Are faculty members other than the principal investigator listed by name?

A Yes, if he is aware of the ones that he wants, and they agree, he will list them by name.

Q Are other personnel sometimes listed by name?

A If he is already aware of who they will be, he will list them by name. Otherwise, he will list them by title, the kinds of duties he would expect.

Q Assuming that the grant is approved by the funding agency, what happens then?

A The university receives notification that the grant has been granted, has been approved.

The principal investigator receives notification.

The university's notification normally goes to one of two offices, either to the president or to the fiscal agent, the fiscal officer, usually the vice president for financial affairs who has signed the application indicating the university's responsibility.

Sometimes the dean of the school if he is also named on the application will receive notification.

At that time the university sets up, one of the financial officers, an account for that grant.

The principal investigator begins to communicate, usually through his dean, to that office, indicating that so and so should be put on the grant budget, whether it is a colleague or whether it is an assistant, or whether it is a secretary, or whether it is a technician. The principal investigator writes out a memorandum normally, or frequently it will be a form that the university has for adding personnel to the payroll indicating that they should be added under such and such grant number, giving the information about them, how much time they will be working and what their salary should be, what their social security number is, how many dependents they would have, and so forth.

Q Dr. Fishman, are grants a valuable source of summer employment funding?

A Grants typically provide for the principal investigators summer income above and beyond the annual salary that the university pays.

Q The grants are pursued, are they not, year round?

A Many grants are pursued year round, and therefore the grants also provide a certain sum of money toward the faculty member's salary year round. Then they provide his summer salary in addition. And an additional summer salary.

Q Dr. Fishman, once a grant is gaanted and a research project begun, are there frequently requests for supplemental funding?

A Yes, that happens commonly. The principal investigator asks for additional funds either because he has had a different related idea, or he hasn't been able to complete it as scheduled, he needs some more time, and therefore some more money.

Q Does that follow the same pattern as the original request?

A Roughly the same pattern, yes.

Q Now, how are the results of the research projects disseminated, if at all?

A Most granting agencies require a report in which the principal investigator writes out in some detail what it was that he tried to do, how it went, and what he found, what he concludes needs to be done.

Many granting agencies will provide funds in the grant for duplicating that report and some number of coppes, 50 or 100, or 200 even, so that that preliminary report can be distributed by the principal investigator to whomever he likes so he can begin to get comments from colleagues in the field as to whether they agree or don't agree with his finding, as to whether they think he should change his conclusions or his interpretations, or add to his bibliography or so forth.

Finally -- that is not really considered publication yet, so thereafter the principal investigator may submit parts, or the entire report for publication to a publisher, to a journal.

Q You have told us that various people work on these grants, they include the principal investigator, do they not?

A Yes.

Q Members of the faculty, full-time?

A Yes, frequently.

Q And part-time faculty?

A Part-time faculty and non-faculty.

Q When you say non-faculty, what do you mean?

A As I mentioned, grants will frequently provide for research assistants. These may very well be students, commonly it would be students or secretaries for lab or other technical assistants. Sometimes they provide for a full-time associate who is not on the university's tenable lines, but he is a full-time research associate on that grant.

Q Now, all of these people that you just refered to, whether faculty or non-faculty, are employees of the university, are they not?

A Yes.

Q There is no question about that, is there?

A They are employees of the university in the sense that the university is paying them, they are on the university's payroll, they are working -- their working conditions are governed by university patterns of employment, practices of employment. They are university employees. Since the university pays social security for them and withholds their taxes for them.

Q Should one of these principal investigators simply abscond or not do any of the work for which the agency is paying, is the university responsible?

A The university would be fiscally responsible for funds misspent by the principal investigator.

The grant monitoring office has a copy of the contract, and when the principal investigator asks that funds be disbursed for such and such purpose an individual in the grant monitoring office refers to the contract to see whether the contract provides for such expenditures.

Q The grant is a contract between the granting agency and the university; is that correct?

A Yes.

Q And that grant contract is managed by the principal investigator; is that correct?

A Yes.

Q And his expenditures are monitored in the grant funding office?

A Yes.

Q Is it correct that the principal investigator selects the employees on the grant?

A Yes.

Q Who assigns these employees to particular tasks?

A He does.

Q That would be so --

A Or someone he asks to do so does.

Q That would be so whether those employees are faculty or non-faculty; is that correct?

A Yes.

Q Who decides what the hours are to be scheduled for the work on the grant?

A Within university practice he does. The university is closed on certain days, the grant then is closed on those days.

Q Does the principal investigator have authority to reprimand employees on the grant?

A He has the responsibility to reprimand.

Q Does he adjust their complaints and grievances?

A Yes.

Q Has he the authority to effectively recommend their determination?

A Yes.

Q Subject of course to the tenure provisions of the university?

A As far as their work on the grant, tenure provisions don't apply. It applies only to their work on the university payroll.

Q I am talking now about full-time faculty.

A Yes.

Q With respect to other than full-time faculty, does the principal investigator have the power to effectively recommend the termination of all employment at the university, total termination?

A Yes.

Q Does he have the power to authorize overtime for non-faculty employees?

A Yes.

Q Now, Dr. Fishman, in your experience, what percentage of time, time over the whole year, do principal investigators spend on research programs?

MR. SCHECTMAN: I will object to this question on the basis that it is a generality listed for 15, 20, maybe 30 names here who apparently have working working with, or under them, anywhere from one to 20 or 25 people. Unless the question is more specific, I don't think it warrants any answer.

HEARING OFFICER: Repeat the question.

(Question read.)

MR. KRAMER: The witness testified, Mr. Banks, that he has experience in this area, he himself has grants, he was the dean of the Ferkauf School for several years. The question is not in someone else's experience, but in his experience what percentage of time do they spend.

MR. SCHECTMAN: He is asking what percentage of time

Dr. Fishman spent?

MR. KRAMER: No.

HEARING OFFICER: He is saying a principal investigator.

MR. KRAMER: In his experience, what percentage of time have principal investigators that he has been acquainted with over the years spent in working on their projects.

HEARING OFFICER: Overruled. You may answer.

A It varies. Typically all of the summertime, and throughout the rest of the year. There are a large number who are on half time research support. And there are a number on less than half time.

Q Now, again in your experience, Dr. Fishman, both as a dean and as a principal investigator, and as an observer of people who are acting as principal investigators, what percentage of time spent on research projects by principal investigators is spent supervising research assistants and other non-faculty personnel?

A It varies, it varies with the number of such staff on the projec[illegible] It will therefore vary from project to project. It varies within the project for different stages of the project. Usually a lot more supervision is required initially, and sometimes a lot is required at the very end.

Q Now, Dr. Fishman, what causes these variables?

A The size of the project, the extent to which the principal investigator is the only one who can do certain things, and therefore has none that could be supervised, or the extent to which there are others who could do these things and have to be taught how to do them, have to be shown how to do them. have to be watched while they are doing them.

Since many of the project staff are students it is quite common that the principal investigator invests a lot of time in supervising them.

Q Would the rate of turnover on a project affect that?

A Yes, if staff has left and new staff comes, they then again have to be taught the ropes. That requires additional supervisory time.

Q And would the complexity of the project, roadblocks and pitfalls that may be encountered affect the variables?

A If there are unanticipated problems, someone who was working along smoothly is found not to be working effectively, or has come up with a problem that he himself hasn't been trained to handle, then the principal investigator has to step in.

Q Just so the record is clear, Dr. Fishman, is it your testimony that on some occasions principal investigators may spend more than half their time on their research projects, and on other occasions less than half their time?

A Yes.

Q Is it your testimony that on certain occasions principal investigators, certain projects, not occasions, principal investigators may spend more than half their time supervising and on other projects they may not?

A At times, yes.

Q Either times or projects?

A Yes.

Q Is it very difficult, to quanity this thing?

A Yes, it is difficult.

Q But nevertheless you are sure, I take it, Dr. Fishman, that these principal investigators do supervise the non-faculty employees on their grants?

A By supervision you mean the various things that you have asked me before, those are the things that they definitely do.

Q And they also, do they not, have a managerial responsibility to see that the grant operates within the funding limits established by them?

A They have to watch how the money is being spent to see whether they are coming to the end of the money fasther than they had thought, and to speed people up if that is the only way of finishing it on time.

Q That money is being spent either on equipment or salaries of employees of the university; is that correct?

A Supplies, yes.

Q Is there any question in your mind that the people who work on these grants are university employees?

A They are all university employees.

HEARING OFFICER: In the event that it is discovered that the funds originally allocated are not going to be sufficient to complete it, who will be responsible for trying to obtain additional funds?

THE WITNESS: The principal investigator normally is the one who discovers that, and he is the one who undertakes to convince the granting agency that it is worth their making an additional investment, an additional allocation so he can complete it. He will communicate with them usually informally about this to see whether there is some change that they will agree. If he gets any informal encouragement he will then normally apply to them so that they will do that.

HEARING OFFICER: Now, anything which developed from this investigation, who would get the benefit of it, would it be the organization that supplied the funds, the university, or both?

THE WITNESS: That is somewhat technical, I am not sure of the exact answer to that.

In most cases the product is a book or a publication, and therefore it is difficult to attribute its benefit to any particular person.

Now, in some cases it is a patentable something or another, and there is a university policy governing patents and the university's rights to the patents, as well as the investigator's rights to the patents.

HEARING OFFICER: That is all I have.

Q Is there a standard faculty research agreement?

A Yes.

Q That is found in the faculty handbook, is it not?

A Yes.

Q Which is Exhibit 51 in evidence?

A Yes.

Q Dr. Fishman, you told us that you have had several research grants?

A Yes.

Q Did you have a research grant in 1966 thorugh 1968?

A Yes.

Q Will you tell us about that grant, and how you went about managing it?

A That was a rather large grant requiring a rather sizable staff, and therefore having indicated the various positions that I would try to fill if the grant were forthcoming when it was forthcoming I proceeded to hire a full-time professor at another university who was on leave of absence that year from his university, and therefore came as visiting professor to us, thanks to the fact that I had received this grant, and was also teaching at the university that year.

I also hired a full-time research associate who left, completely left his job at another university and came to work with me on this grant.

In addition to which he taught part-time at the university.

I hired several student assistants, I really can't now remember whether it was eight or ten or twelve, quite a number. Several assistants who were students but not at the university, but who had recently completed their doctoral studies at other universities, were looking for employment while they wre completing their dissertations.

I hired several technical assistants to assist in data collection.

I hired secretaries and typists.

I think that about covers the kinds of assistants.

Q Who provided this grant, Dr. Fishman?

A It was an office of the federal government. I believe it was called at the time the International Studies section.

Q The grant was given to whom?

A The grant was awarded to Yeshiva University for the purposes outlined in my application.

Q And the employees you hired were employees of Yeshiva University?

A Yes.

Q They weren't employees of Joshua Fishman, were they?

A No, I didn't pay them out of my pocket.

Q The university paid them, did they not?

A Yes.

Q Covered them with workmen's compensation?

A Yes.

Q Social security?

A Yes.

Q They worked under the overall university policies; is that correct?

A Yes.

Q Dr. Fishman, approximately how much was this grant for?

A As near as I remember now, it was $150,000, or perhaps a little more, for two years.

Q You are presently vice president for academic affairs for the university. Were you president for academic affairs in 1966 through 1968?

A No.

Q What position did you hold at that time?

A Research professor in social sciences, university research professor.

Q Tell us what this project was about in lay terms.

A It was a study of a community in Jersey City, most of whose inhabitants were bi-lingual, speaking both English and Spanish. It was an attempt to describe bi-lingualism in a community by the approaches and based on the theories of different disciplines. So that it required that a sociologist and an anthropologist, and a linguist, worked together studying the same people with different instruments, from different points of view, in order to determine whether the picture that resulted of individual bi-liqualism would be different when approached from different theoretical prospectuses.

Q Did you direct this project?

A Yes.

Q Did you tell the people on it what they were supposed to do?

A Yes.

Q Then see to it that they did it?

A Yes.

Q There wasn't anybody over you to see that this was done, was there?

A No.

Q It was your responsibility to manage the project?

A Yes. But I remember an occasion when I wanted to make an expenditure on that project and the grant office notified me that that expenditure they couldn't find any authorization for that in the grant contract. Therefore I had to write to the granting agency in Washington to get their official approval for that kind of authorization. Otherwise -- for that kind of expenditure. Otherwise the university would have felt that that might have been questioned upon review later and the university would have to make up that expenditure itself.

Q Did you manage to get the money?

A Yes. I got the authorization to spend the money that way.

Q Did anybody tell you how to go about doing it?

A No, they just told me that I had to get authorization.

Q How you went about doing it was your affair?

A Yes.

Q All the time that you were managing this grant, Dr. Fishman, you were an employee of the university?

A Yes.

Q A full-time member of the faculty?

A Yes.

Q With tenure?

A Yes.

Q In the 1972 spring term did you have a grant?

A Yes, that was from '69 to '72.

Q Was that grant different from the grant that you just described to us?

A It was a different grant, yes.

Q Under this grant, however, did you also have authority to hire personnel and direct them?

A Yes.

Q And were they personnel who were employees of the university?

A Yes.

Q Do you currently have a grant? By currently I mean during the '73-74 academic year.

A Yes.

Q Do you have the same authority under that grant?

A Yes.

Q Have you applied for a grant next year?

A Yes.

Q And will you have the same authority under that grant?

A That grant has been granted and I have that same authority for the next grant. In fact, I am looking for personnel now.

Q Would this be so whether you were a professor teaching or academic vice president administering?

A The authority with respect to the grant doesn't derive from my administrative position, it derives from my being a principal investigator in a grant.

Q That is a scholarly position, is it not?

A It is a research position as a result of having received a research grant.

Q Carries with it supervisory and managerial functions, does it not?

A Yes.

MR. KRAMER: I have no further questions of this witness.

HEARING OFFICER: At this time we will adjourn until tomorrow at 10:00 a.m.

(Adjourned at 4:00 p.m. as above noted.)

have complied, except for the inadvertent omission of the Fischel School, which is a summer school catalog and Teachers Institute for Women schedule, we have complied with all of the documentary requests of counsel and I think we've more than complied.

MR. SHECHTMAN: Off the record.

HEARING OFFICER: Yes.

(Discussion off the record.)

HEARING OFFICER: On the record.

MR. KRAMER: I will supply the TIW and official schedules, if there are such schedules in existence. It may very well be, these being relatively small programs, that there is no such documentation that we can get our hands on, but we'll look.

HEARING OFFICER: Very good. I think this is a good time for a temporary recess.

(Ten minutes recess taken.)

HEARING OFFICER: On the record.

Are you prepared to continue with your cross examination now?

MR. SHECHTMAN: Yes, we are.

CROSS EXAMINATION (Continued)

Q (By Mr. Shechtman) Dr. Fishman, I call your attention to Employer's Exhibit 71 and now show you the first page designated as Exhibit 71A, indicating university there are no departments involved. This issue has come up this year.

Q If you were told on June 18th, 1974, Professor Morris Silverman notified Dean Bacon, Dean Murtsky and Dean Komar, I believe those are the deans of Yeshiva College, Stern College for Women and the Belfer Graduate School, that the mathematical society submitted questionnaires to the university, and Professor Silverman stated there are three mathematics departments in the university, would he be in error?

A I think he would be in error in the fact that he was taking one which is informally labeled that way and referring to it that way.

Q Dr. Fishman, the faculty handbook, page 8 designated four academic ranks, structure, assistant professor, associate professor and professor.

Are there written requirements for the promotion of the faculty members of Yeshiva University?

A There are, yes.

Q And with particular regard to which ranks?

A With regard to all ranks.

Q Is it within the power of each school of the university to establish guidelines for the normal expectancy with regard to length of service in particular academic ranks?

A Yes.

Q And is it not true that at numerous schools of the university there are standing committees particularly addressed to the question of promotions?

A Yes, sir.

Q Is it not true that they deal with solely the issues of promotion of those faculty who work primarily or are based in the school at which the committee serves?

A Yes, sir.

Q Do you have knowledge whether any such committees are established by the constitution or by-laws of any of the individual schools?

A I don't have direct knowledge, but I assume that this would be covered, could well be covered by the by-laws of the particular faculty groups.

Q Now, on direct testimony you testified as to the definition of full time and you indicated that it was a certain number of course hours or its equivalency.

You also indicated on direct testimony that the definition of equivalency was distinct in the graduate schools and the undergraduate schools.

Could you amplify that?

MR. KRAMER: I must tell you that you are misstating --

Q Or if I am misstating the testimony, please indicate it and clarify the point.

A There are a number of possible equivalent factors, that could be equivalent to number of hours that professor teaches, his research, his committee work, his dissertation guidance, his administrative responsibilities.

Q Will the equivalency factors be generally defined and applied on a school by school basis?

A Well, these factors that I mentioned, they are pretty much over all. They are the ones that are applied over all.

Q Would it be, however, the responsibility of a dean of an individual school to decide whether a faculty member in his school has met the full time requirement of course hours plus a certain equivalency?

A It wouldn't be his responsibility to determine what the equivalents should be. But that having been determined, he ought to check it out to be sure that faculty members that are full time are doing a full time load.

Q Who then makes the initial decision whether a faculty member has a full time load? Is it not the dean of the individual school?

A Yes. But he must have a policy for guidance so he knows whether he should decide this way or that way.

Q But the dean of the individual school then applies that policy to the individual cases?

A Yes.

Q And accordingly, defines whether a faculty member is serving full time, according to the given policy?

A In essence, he indicates that he is, because if he isn't, the university requires that he be assigned to additional duties.

Q Are you familiar with reports published by the American Association of University Professors entitled The Annual Report on the Economic Status of the Profession?

A No, I am not.

Q Do you ever read the Chronicle of Higher Education?

A I do.

Q And are you aware that recently they published data which they stated was from the American Association of University Professors?

MR. KRAMER: I must object, Mr. Hearing Officer, to the relevancy of this type of question. Why doesn't he ask him whether he is familiar with the Wall Street Journal and whether they have printed data that has been provided by the American Federation of Teachers.

I just don't see where this kind of a line of inquiry has any relevancy in the proceeding.

MR. SHECHTMAN: If I can be allowed to go on, I will show in fact that Dr. Fishman has discussed such data with people present in the room.

think the question does mischaracterize what took place on cross on pages 516 and 517.

MR. SHECHTMAN: Let me now rephrase the question more precisely with reference to the prior testimony on page 517 of the transcript in this proceeding.

Q You testified, Dr. Fishman, that deans have the appointments recommended to them. Generally, how are those appointments recommended to them?

MR. KRAMER: I don't think that testimony is what is reflected in the record.

MR. SHECHTMAN: I will read the question and the answer.

MR. KRAMER: I withdraw my comment.

A The deans are in the pivotal position in connection with hiring. The programs with which they are in touch express needs for new faculty to them. The university administration lets them know about the budgetary possibilities. The deans therefore, together with each other and with the people in the programs try to translate those possibilities into what should be done.

Some of it could be used for full time faculty or for part time faculty or for other acquisitions.

At any rate, this kind of discussion goes back and forth and normally, depending on the size of a school, some schools are really so small that you would consider them departments, and, therefore, the dean is in touch with the whole faculty and, therefore, he doesn't need anyone else to recommend this to him. But in a larger school it would be the chairman who mostly works with the dean and, therefore, the program faculty of that department or the various departments involved in the program that are communicating with the chairman, he communicates with the dean.

The dean is in touch with other deans.

In other words, it's a pooling of information which is fed to the dean and which is then fed to me and to Dr. Sokol and so forth, to the president.

Q So that when a dean is in the position, that pivotal position to make a recommendation of an appointment, is it not true --

A Not so much that he is pivotal for recommending. He is in the center of information that comes from various other sides, from the faculty and from other administration.

MR. SHECHTMAN: May I have this marked for identification Petitioners' Exhibit 3.

(Whereupon the document referred to was marked Petitioners' Exhibit No. 3 for identification.)

Q Dr. Fishman, on direct examination you testified that a new tenure policy was promulgated and distributed separately from the handbook as a whole.

A A revision of the tenure policy was approved.

Q Yes. Are you familiar with this memorandum addressed to Academic Deans and Directors from Samuel Belkin, with -- in handwriting, a notation "Approved, S. Belkin"?

A Yes.

Q I'm sorry?

A Yes.

Q Did this memorandum -- was this a covering memorandum over the revised tenure statement as it was distributed?

A Yes.

MR. SHECHTMAN: I would like to have this marked in evidence as Petitioners' Exhibit 3.

MR. KRAMER: No objection.

HEARING OFFICER: Petitioners' Exhibit 3 is received in evidence.

(Petitioners' Exhibit No. 3 for identification was received in evidence.)

Q This memorandum voices president Belkin's pleasure that faculty welfare committees were involved in the development of this tenure statement.

Do you know what that means?

A Yes.

Q Could you tell us?

A I wasn't there at the time. But I heard about it during this year that I have been at the university.

Several years ago the process of reviewing this tenure policy began. The review, as I understand it, was initiated at the recommendation of the executive council. And all of the welfare committees of the various schools were asked to participate by providing comments and suggestions for the revision of the current tenure policy, and also the executive council, or some subcommittee of it, also proposed recommendations for revising the then current tenure policy.

So that the various welfare committees reacted to the ones that were being suggested to them and made their own suggestions. The process then just continued in terms of continued discussions, until the executive council, having met with all the welfare committees or some representative of the executive council, having met with all the welfare committees or gotten all of their views, proposed a revision, which included many of the recommendations coming from different faculty welfare committees. The college, I know particularly, and Belfer and Wurzweiler had some feed in, and Ferkauf.

Q Are welfare committees standing committees at virtually each of the schools of the university?

A I can name the ones that I know of. Shall I do that?

I know there is a welfare committee at Ferkauf. I know there is a welfare committee at Belfer and a welfare committee at Wurzweiler and a welfare committee at Stern and a welfare committee at the college. Those are the ones that I know of.

Q Now, back to the revised statement of university policy on tenure, what university official or faculty member is now first responsible for the initiation and institution of the proscribed procedure by which a tenured faculty member might be dismissed.

MR. KRAMER: I would think the procedure speaks for itself, Mr. Hearing Officer. It is in evidence and quite detailed.

MR. SHECHTMAN: We have seen some variances between these procedures and the actual conditions at the university. The first thing that comes to mind is it doesn't list a newly formed council on graduate schools. And if it's the same as it is in the handbook, the witness can so designate. It's a very brief and I hope expedient line of questioning here.

MR. KRAMER: I'm objecting simply to raise a technicality.

The procedure on tenure, the university-wide procedure, was announced on or about January 14, 1974, based on this statement in Employer's 51, and on or about

A Other universities or colleges outside the university?

Q Yes.

A Outside of Yeshiva University?

Q Yes.

A Well, I do not, to my own knowledge, know that there have been, but by special invitation I suspect they might.

Q And are there not special programs at the university by which faculty members from other universities or colleges may teach for one semester or two semesters at various schools of the university?

A There is a difference. Our part time faculty may be drawn from various other universities or in fact, non universities. But for a committee, for government purposes there might be a --

Q I'm going to interrupt because you are not being responsive to the question.

I'm not referring now to committees. I'm talking about participation of faculty from other universities or colleges in the teaching programs at various schools.

Q You did ask committees. I think you did ask about committees.

Q Yes, but this is a separate question.

MR. KRAMER: I'm a little lost now myself. Could we just, so the record is clear, pose the question so that it's generally understood.

Does the witness understand the question?

THE WITNESS: I think the question is whether people who are on the faculty of other universities have any association with programs at the university, academic programs?

Q Yes.

MR. KRAMER: I have no objection to that.

A I said in a part time capacity that certainly happens as many of the people on our part time faculty are drawn from other universities or from even non university pursuits.

Q Is it not true that on some occasions a member of the faculty of another university or college will teach at a division or school of Yeshiva University for an entire year with approximately a full time teaching load?

A He might be on leave of absence from his university. He might be on sabbatical from his university. I would say that would be a rare, a very rare arrangement.

Sometimes university is left in the last moment with the faculty member who is deceased or resigned and some urgent arrangement is made with somebody to step in and pick up his load. But normally that would -- I mean that would strike me as very unusual that he would simultaneously have a full time job some place else and also have a full time appointment at Yeshiva University.

Q Dr. Fishman, that is again not what I asked.

I said given that a faculty member of another university --

A Is he or isn't he on the faculty of another university.

Q He is on the faculty. I'm just asking, is it not true that on occasion such faculty member will assume a full time load at Yeshiva University?

A You know, I think it can happen on occasion, but would be extremely rare and unusual.

MR. KRAMER: Mr. Hearing Officer, if we are dealing with the question of visiting professors, I suspect we may very well be at this point, I would like to inquire of the petitioner whether they are seeking to include visiting professors, being professors who hold full time faculty appointments at another school who are taking a leave of absence or gone on sabbatical and may be teaching here in this bargaining unit or to exclude the visiting professors from this bargaining unit?

I think in our opening, we indicated they should be excluded. But we had no response on that.

MR. SHECHTMAN: We are not including visiting professors in the bargaining unit unless in fact, they are appointed to the faculty by some formal appointment.

MR. KRAMER: I think that would be because of their temporary status.

MR. SHECHTMAN: That would be true, because of their temporary association with Yeshiva University.

MR. KRAMER: I have no further comment.

THE WITNESS: Do you want to know whether they are appointed?

MR. SHECHTMAN: No, I don't.

Q Is it so rare that a member of a faculty of another university or college on sabbatical or on leave will teach at Yeshiva University?

MR. KRAMER: I must object, Mr. Hearing Officer. Virtually every university in the country, I think it would be conceded here, have at one time or another a visiting professor or several visiting professors working for them.

Counsel is not seeking to include visiting professors who aren't appointed within the bargaining unit. We have no objection to that position, assuming there is a bargaining unit here ultimately found appropriate.

With that decided, aren't we just burdening the record with irrelevant matters?

MR. SHECHTMAN: We will accept the concession that there are visiting professors or visiting faculty members

A The handbook only calls for -- the university faculty handbook calls for certain university commitments. It doesn't list all of the university committees that are standing committees.

Q You have a good deal of contact with the various deans in the various schools of the university, do you not?

A Yes, I do.

Q Could you summarize briefly the roles and responsibilities of the dean at one of the schools of Yeshiva University?

A Just that one particular school generally.

Q Let's say typical roles and responsibility of a dean.

A The dean is the chief liaison officer between the programatic activities of the school and other schools and the central university administration. It would be concerned with the academic programs and their needs in terms of faculty staffing, student aid. Those are I'd say his major concerns because all that information funnels from school to school and from school to administration centrally through him.

Q He also has some concern with the school's budget you testified before?

A Yes. Budgetarilly --

Q You need not -- I think you testified before. I just wanted to --

A I said budgetarilly he doesn't have the same significant role as he would programatically.

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Q Now --

MR. KRAMER: Is the witness finished with his answer?

THE WITNESS: There are other things. He convenes the faculty meetings usually. He reports on the school to the executive council whenever -- he is usually also present or a member of the graduate council and undergraduate council, takes up school concerns that have a university-wide implication on those occasions. I could go on. There are other areas.

Q When a particular grievance arises from a faculty member over, let us say, his or her course scheduling or desire to take a two or three day leave or some other kind of routine matter affecting the employment, terms of employment of that individual, is it not generally the dean who attempts to resolve those?

A I wouldn't say that was generally the case, particularly in larger schools. Either the department chairman would be the person the faculty member would normally direct matters of that kind to.

Q But always subject to the approval or veto of the dean?

A That's normally the case. It may be that if there is an established pattern or practice for handling that kind of matter, then the chairman himself can arrange it with the faculty member.

Q But usually such established patterns of practice would be approved by the dean or other university official?

A If it's changing the time that a class meets because he can't meet that week with his class because he is going to a conference, let's say, somewhere. I'm not sure that the dean needs to be concerned. I think probably the chairman, if it's a program in which there is a chairman, would try to clear that, assuming the faculty member cleared with his students and the students can all come, would clear that with the registrar's office to be sure that it was on record and to be sure there was a room available at that time, and so forth. They are matters which are so routine that they don't go to the dean. And then there are matters that are of greater concern that do.

Q If there is an issue on the point as to salary, would it be inappropriate for a faculty member to approach the chairman of the welfare committee or the welfare committee to inquire as to such a matter?

A We have a strange mode of life at our university where faculty members will promote the president directly when they are unhappy about their salary, or the vice-presidents. But I would say since the welfare committee is a standing committee that is concerned with school-wide, sometimes school-wide provisions for faculty welfare, that doesn't strike me as a good committee for a faculty member to go to if he has a salary grievance, although he might.

Q Now, you testified that there is a committee entitled the university faculty review committee?

A Yes.

Q And they handle some grievances, and I believe over the last two academic years, you stated that there were three such grievances?

A I think there were --

MR. KRAMER: I think you misstated the record.

Q Excuse me. You said there were three faculty members who raised issues with that committee? Am I correct?

A I remember there were four over the last few years.

Q And what were the particular issues affecting those faculty members?

A If I remember correctly, the grievance committee --

Q Not the grievance committee. I'm referring to the unversity faculty review committee.

A Yes, that is the university grievance committee. The university review committee is the university review committee for faculty grievances. And it specifically is exempted from considering salary items.

So that to the best of my knowledge, all of its concerns have had to do with lack of promotion, not being recommended for promotion, not receiving promotion, or questions of tenure.

Q So then is it accurate to state that it's domain refers or is generally related to grievances relating to promotion or tenure?

A Well, I think specifically it cannot handle fiscal grievances. It can handle any other grievances but traditionally handles tenure grievances and promotion grievances.

Q Do you have any personal knowledge of a prior occasion on which it has handled a grievance other than a promotional or tenure one?

A No, I don't.

Q You testified before, Dr. Fishman, that you were knowledgeable about a letter that Dr. Miller and Dr. Behrends sent to president Belkin regarding terms of their employment, writing in a representative capacity.

A It wasn't about the terms of their employment.

Q About various items, compensation, working conditions?

A About various reasons why the faculty association should be recognized.

Q Are you familiar with the letter that stated specific requests for improvements in their salaries and working conditions in terms of employment?

A If it's that same letter, if there was another letter -- if it is that same letter, I believe salary is mentioned in that letter. That's why it came up for discussion.

If there are two letters, I really only know of one.

Q Did you speak to Dr. Behrends or Dr. Miller about meeting with them to discuss the issues?

doctoral certification of students -- of the program training teachers, the so-called teacher-training programs at the university?

A There are several programs -- all programs are registered. For all programs there are requirements. Therefore, there are also requirements for the teacher education programs.

Q And those are particular and special programs?

MR. KRAMER: I object. It calls for a conclusion. I don't know what particular and special means, Mr. Schectman, except I know we'll see it in the brief.

Q (By Mr. Schectman) Is it not true a graduate from a teacher-training program at Yeshiva University has accordingly a certificate to practice that profession in New York State?

A Because our programs are recognized as registered, my understanding is when a student finishes one of our programs--

Q Teaching programs?

A Yes, because it is registered, he, therefore, automatically is certified or something of that nature in New York State, because New York State has registered our programs. Because the New York State Education Department has registered the programs.

Q Now, Dr. Fishman, with respect to principal investigators and the grants under which they operate, who is the named grantee generally for the grants on which principal investigators take part?

A You mean to whom the money is given?

Q Yes.

A Well, it's normally given to the university.

Q And who is the named grantee generally?

A I ask you, does that mean to whom the money is named to be given?

Q Are you familiar with National Science Foundation grants?

A I've never had one myself. I must say so. But I get notices of grants that have been awarded. I get copies of the face sheet of them so I know the grant has been awarded. And normally it will name the university, principal investigator, the fiscal agent of the university who has signed for the application, and there is some variation in that connection. Which of those is the grantee I'm not sure.

Q Now, when an expense or bill is incurred in the course of a grant, who issues --

MR. KRAMER: Before you go on, since it's your question, counsel, possibly you could tell -- and the witness says he is not sure who is the named grantee, could youdefine what you mean by named grantee and we can clarify the record. It is not a term he's used. It's a term you've used which he just said he doesn't know which of those three it is. If you will tell him what you mean by named grantee, he can close up the answer that he has just given and not leave a hole in the record that we will have to fill in later.

MR. SCHECTMAN: With reference to the term grantee, my particular reference is to the National Science Foundation grants and, as I'm informed as with other grants, the grantee is designated as the university.

MR. KRAMER: What do you mean by the term? You asked him a question using the term and he answered there are three names on there usually, the university, the principal investigator and the fiscal officer. And he doesn't know which is the named grantee but you never defined the term for him.

MR. SCHECTMAN: I asked him if he knew.

MR. KRAMER: You've used the term.

Mr. Hearing Officer, if counsel is going to use the term, the term should be defined. Is the name grantee in your question the group that gets the money, the person who manages the grant, or the fiscal officer who manages it? It's unfair to ask a witness a question and then have him say maybe one of three, he doesn't understand what the named grantee is. He didn't introduce this term into this testimony. You did.

MR. SCHECTMAN: Let me make it more precise for the record.

Q (By Mr. Schectman) I mean now that when funds are granted and a check is drawn for the funds of a grant, in whose name will that check be drawn?

A Well, I've never seen any of those checks. I assumo that no foundation or government agency is going to make out a check to a professor at the university. So they will probably make it out either to the fiscal officer or to the university, because that's how the funds are going to be monitored.

MR. KRAMER: We would be prepared to stipulate with you that the funds in all normal circumstances -- there may be some we don't know about -- go from the granting agency to the university. How the check is drawn I don't know.

Q (By Mr. Schectman) Now, with respect to expenses and bills incurred in the course of a grant, who issues the money orders with checks for their payment?

A Who writes the check?

Q Yes, is it a university official other than the P.I. P.I. I am referring to the personal investigator.

A I would say with rare exception, it can be the P.I. I've heard of that being done. In fact, I know of that being done. But it would normally be the university fiscal officer, as those checks all are printed. They are all made ready in some central university office and they all get signed by university people.

Q When other persons are employed to work on a grant, is it not customary for the principal oinvestigator to submit a requisition to his respective dean to place that person on the payroll?

A Yes, I think I testified that that's what I did, what is done, except I suspect on rare occasions where the principal investigator will send it directly to the fiscal officer himself.

I know some such instances when that has been done.

Q Is it not true that any persons employed on a grant other than faculty members are bound by university personnel, regulations and practices?

A Yes, that's generally so. There are outer limits within which they are bound.

Q Now, are there not some secretaries who take part, or whose pay is derived to some extent from grant funds?

A Yes.

Q And do they work and are there some secretaries that are represented by unions and whose wages are set by collective bargaining at universities?

A Yes.

Q Do principal investigators play any substantial role in that collective bargaining process?

A In which process?

Q In the collective bargaining for the salary and working conditions for those secretaries?

A Well, going by the negotiations that are currently on going for 1199, and what I've been told about past negotiations, there have been both faculty and student administration representatives in those negotiations.

Q Who is ultimately responsible for approving any kind of collective bargaining settlement?

A Ultimately the president and the Board of Trustees.

Q And who will generally submit a recommendation to the president and/or the board of trustees?

A Well --

Q Would it be Mr. Sokol?

A I think he would. The university attorney would. There is also a labor council in the university. But there would initially be I suspect a recommendation to them from the committee that is involved.

Q Now, with respect to other persons who are employed in part or in whole in some aspect of a grant, do you have any knowledge of whether deductions are made from their compensations for a pension fund?

A I don't know whether they qualify for participation in the pension fund.

Q Are deductions made, however, for the pension fund?

A Well, if they don't qualify for the pension fund, then there would be no deductions made for it.

Q Are you saying that with certainty?

A I don't know. I don't think that -- well, I would say if they don't qualify for participation, I don't understand why deductions would be made for this purpose.

MR. KRAMER: I would ask for a stipulation from Petitioner that employees -- not talking about full time faculty members-- employees employed on these grants are employees of the university. We ought to clear the record on that point.

MR. SCHECTMAN: Well, we will show that that is not such a clear matter.

MR. KRAMER: Who are they employees of, counsel, just so we know what we are litigating?

MR. SCHECTMAN: Let's bring out the issues and then maybe we can come to a conclusion afterwards.

MR. KRAMER: Is it your position that the principal investigators are -- that the employees are employees of the principal investigators?

MR. SCHECTMAN: That position will be established on the record of --

MR. KRAMER: As I understand it, Mr. Hearing Officer, the Petitioner has no position on those who work on the grants.

MR. SCHECTMAN: There are many questions and facts which we will undertake to bring out on cross-examination of witnesses presented as well as under direct examination. At this point we are willing to make no stipulation.

MR. KRAMER: So the record is clear, it is the position of the university that all principal investigators are supervisors within the meaning of the Act or managerial employees within the meaning of the Act as recently defined in the Textron Decision and should be excluded from the bargaining unit.

Somebody must supervise these employees.

Q (By Mr. Schectman) With respect to Employer's Exhibit 62, you submitted a listing of past, present or possible future principal investigators. It's a relatively extensive list, it appears.

Do you have personal knowledge of what per cent of the time these principal investigators in fact spend in that role on a case by case basis?

A No, I wouldn't know them case by case. It was mostly from my own experience, a few individuals I do know --

Q I would be interested only case by case --

A I would know some of these on a case by case basis.

Q About how many of them on a case by case basis?

A At the Ferkauf School I know -- I have a definite impression I would say about most of them.

Q Can you tell me how many of them at Ferkauf College would spend more than 50 per cent of their time in that role?

A I think from time to time they might all have to.

Q No, I mean over let us say one academic year.

A Again, depending on what stage they were in, and that might be the academic year in which they were doing it. It's very hard to estimate this. I think I said that it was very hard to come to an average on things that vary so much.

Q You do make such estimates, however, or does not the dean ofFerkauf make such estimates in his definition of who is a full time faculty member?

A His estimates are normally the same as the official designation in the grant application. Grant investigators just constantly discuss with each other and indicate how they have to be spending more time on it than the university is really getting money for it.

Q Is it not true that in a great majority of cases a significant, if not, let us say, their greater part of principal investigator's time -- I mean again over the term of the grant let us say -- would be spent in its research, analysis and writing?

A If it's that kind of grant, then in the research time involves the supervision of his research assistants or his research staff.

Q That's not what I'm asking. I'm asking in terms of actual research, in terms of the time the principal investigator spends himself, I mean with respect even to your grant. Is not the greater part of your time spent personally doing research, analysis and writing?

A Well, let's go back to the big grant that I was discussing before, roughly '66 to '68 that went on. My question is, how do you break out the time that I spend with research associates and the research assistants, deciding how to do, what to do, when to do. It makes me feel better to say that that's research But actually it's the process of organizing people to get things done.

Q But I'm exactly asking you that, Dr. Fishman, to break out the time. And I mean for you to tell me approximately of all the time you spend on a grant?

A Well, on that grant it was a huge amount of time. There was a huge staff and meeting with them to assign them to do this and that took a huge amount of time.

Q Was it more than half of the time?

A Yes, it was absolutely more than half of the time. In other words, the time I could sit alone and write something up, without having to supervise somebody doing something was actually too little of the time.

A I don't mean with respect to just supervise. I didn't ask with respect to supervising. I mean counting in terms of your research, conference on academic matters, conference on academic issues, in other words, conference on issues under analysis, intellectual analysis of them, as well as the research and the writing that you did in conference with other people with respect to that, about what per cent of your time was spent?

MR. KRAMER: I object, Mr. Hearing Officer. The witness has answered this question. He has said that more than 50 per cent, more than half of his time was spent in what we call administering or managing or supervising these people. He said he'd like to call it research but it is not so. First he said a huge amount, then he said more than 50 per cent.

Now, you are asking him the same question again over and over again. I know the answer is not one that necessarily helps the Petitioner but that is the answer that the witness has given.

MR. SCHECTMAN: Mr. Hearing Officer, I asked the question in different terms. It can be read back.

MR. KRAMER: I don't think it is in different terms.

MR. SCHECTMAN: I ask that the witness be directed to answer.

HEARING OFFICER: I think it can be very easily simplified.

The witness has indicated he did two things, one was supervising and the other was writing, the writing matter that he had to do in connection with the study.

Did you do anything other than those two things in connection with the project?

THE WITNESS: There were also occasions in which I myself gathered data. I went to do interviews myself.

Q (By Mr. Schectman) Were there not occasions on which you sat with other people involved in the project and discussed some of the intellectual issues involved or some of the practical problems involved?

A There was a stage when that goes on. Actually, I had that formulated myself pretty much before we began.

Q Do you know Professor Goldstein at Ferkauf College?

A Yes.

Q How would his grant be comparable to the large grant you had?

A It's much larger than mine. It involves much more staff than mine.

Q Did you speak to Mr. -- Professor Goldstein about testifying here?

MR. KRAMER: I object, Mr. Hearing Officer. I can't see --

MR. SCHECTMAN: Question withdrawn.

MR. KRAMER: -- where our work product and what we've done is relevant.

MR. SCHECTMAN: Question withdrawn.

Q (By Mr. Schectman) Do you have some familiarity with Professor Goldstein's grant?

A I know the purpose of that work, I know the dimensions of it, that they are huge.

Q Is it one of the largest grants at the university?

A I do think it is. At least of the Ferkauf school it is.

Q If I told you that he estimated in the last year he spent 5 per cent of his time in supervising that grant, would you find that unreasonable?

MR. KRAMER: I must object, Mr. Hearing Officer. What Mr. Goldstein may have told Mr. Schectman or may not have told Mr. Schectman, Mr. Goldstein is not here to be examined with respect to that. And whether -- the kind of answer that this calls for is really -- has no bearing on this proceeding. Would he be surprised if Professor Goldstein told him that it was only five per cent. And if he said yes, I would be surprised. I think it is 60 per cent, or no I wouldn't be surprised. It won't make it any more or less for Professor Goldstein. The only way to know what Professor Goldstein did is to have him come in and testify.

HEARING OFFICER: I sustain the objection.

MR. KRAMER: There is also an assumption that he knows what the definition is of supervisory.

I doubt if he knows the statutory definition.

MR. SCHECTMAN: I doubt also that this witness knows.

MR. KRAMER: Dr. Fishman testified about supervisory status at the university.

Q (By Mr. Schectman) Do you know any of the other members of the faculty at Ferkauf who in the definition of their full time status have more than 50 per cent of their time attributed or assigned to the, to their work under a grant other than Professor Goldstein?

A There might be, I don't know.

Q Now, when you had your grant, were you also teaching at the time?

A I was teaching at least a course each year. But it could have been a course each semester in one of those years.

Q Is it not generally true in terms of the equivalency factor your course would be deemed one-quarter of your work load and your work with the grant three-quarters?

A There are other factors that count, dissertation supervision, committee work, especially administrative work.

Q That would come out of that three-quarters, would it not?

A That would come out of the total -- out of which three-quarters?

Q In other words, I suggested that one-quarter of the definition of your work load would be designated toward your contact hours, your class room hours and the other three-quarters would be designated toward your grant and other activities, is that not true?

A If I was teaching one course, that's a quarter and therefore there are three-quarters left. So therefore everything else has to come out of those three-quarters, yes.

Q Is that correct?

A Yes.

Q In the last academic year, how many persons do you know who had more than one-half of their time, as used for the definition of full time faculty, attributable to the work time spent on a grant?

HEARING OFFICER: Is that for the whole university?

MR. SCHECTMAN: Yes.

A I don't know how many are budgeted in their grant that way. That's a matter of fiscal. We could find that out.

Q The document before you, Employer's Exhibit 62, does not indicate that, does it?

MR. KRAMER: I object, Mr. Hearing Officer. That document speaks for itself. There is no indication like that there.

HEARING OFFICER: Sustained.

Q (By Mr. Schectman) Is it not true, not withstanding what the application itself reads, that the university or the deans with respect to the schools make some determination with respect to the amount or time attributable to work on the grant for the definition of full time faculty?

A They normally have to take the definition of the grant.

Q So you in fact could find out what per cent of a faculty member's time was spent in the grant doing supposedly supervisory duties and other work by looking at the grant?

A That's not what I said. What I said was there was a certain specification in the grant as to how much of the full time of a professor should be on the grant. But in addition-- in other words, it doesn't specify how much of his time should be in supervising. But in addition to that, professors work on their grants, have grant responsibilities that sometimes go beyond the amount of compensation that the university is getting for their grant work. And they complain about that. I know I did.

Q So then such a complaint would be directed toward the definition of full time status as it affected or work load you might have at the university, would it not?

A Grant generate a lot more work than they recognize officially. And investigators are responsible for all of that even though they are not being credited for all of that in terms of adjustments in their work load.

Q Is it not true that part of a grant, with particular respect to teaching assistance and research fellows who may be associated with it, includes a didactic component?

A There are some grants which are not research grants but training grants.

Are you referring to them?

Q Well, to those and all type of grants. You may make a distinction if you like.

A Well, there are some grants that hey no -- if it is a research grant, to my mind the research grants don't specifically have a didactic component, although students serving as assistants are learning something. But they are not getting usually credit for that academic -- academic credit for that.

Q Now, a training grant, does it not have a serious didactic component?

A I wanted to say, training grants do.

Q At Belfer College, for instance, are not some of the students taking part or employed in a grant for the purpose of completing a dissertation in their doctoral program?

A I'm sure if they can do that they would be delighted, and that some do complete a doctoral dissertation as a result of having been an assistant on a grant. You know, the investigator's purpose and their purpose formally is to pursue the grant.

You know, some research will not work into any dissertations at all.

Q But some will, will they not?

A Some will. Some will years later.

Q Do any assistants ever receive an authorship on any of the grants?

A This happens. In fact, it's good for them and the professor -- who is probably under no obligation to do so, feels he furthers the academic career of a student by acknowleding his help.

Q Do not many, if most of these grants, require a principal investigator to do a significant amount of writing, him or herself?

MR. KRAMER: I object to the term significant. We had this question about writing and research asked about five times during this line of examination. Significant calls for a conclusion of the witness and it is an undefined term.

Q (By Mr. Schectman) You've published a book, have you not?

A Yes, at least one.

Q Were any of these books published as part of or as a product of a grant?

A I have at least two books which are the result of work that began under a grant.

Q But the books were completed subsequent to the grant period?

A Yes, but much thereafter.

Q Was the book itself one of the purposes or stated purposes of the grant?

A In my own grants I had to indicate to the sponsoring agency what they would get upon my completion during the period that they were funding it. And in each case what I indicated was a final report. They would get a final report, how far had I gotten. And they provided funds so that that could also be typed up, because that was a special budget line, the typing up of that final report, as well as preparing a few hundred copies, like 200 copies of it, so that it could be sent to various people in the field whose comments I could then receive. So that subsequently, after the grant was over, this could be written up as a publication rather than as a report.

Q Did you prepare such a report in your last grant?

A Yes, those two I'm referring to, yes.

Q Approximately how long in pages were those reports?

A One of them I would say was -- one of them must have been a thousand pages.

Q Did you write most of those pages?

A No. Actually I supervised the writing of most of those pages by reading them in draft and discussing with the person how to change it. But they are all multiply authored. I heavily followed the procedure of having the assistants get credit, do writing and get credit for writing.

Q What is the distinction between that supervision and the supervision you might lend to someone in the preparation of his or her dissertation?

A It's a different -- it's quite similar in some respects but it is a different aura about it.

Under the grant, that's my responsibility, and they rewrite it the way I say, ultimately, to get down to the clinch.

In dissertation there are other colleagues who are also on the committee and they may have different views, and the student has to juggle the various views. And therefore, I feel if another faculty member on a committee has a different view, in order not to put the student in a terrible bind, I work out a compromise with that other faculty member, so as not to hold him up on the dissertation.

In a chapter for a grant report, I don't have to compromise that way. I tell them, this is the way I want it done, this is the way I think it should be done.

HEARING OFFICER: Suppose we take five minutes right here so the reporter can get a chance to break.

(Ten minutes recess.)

THE HEARING OFFICER: The hearing will be in order.

Q (By Mr. Schectman) Dr. Fishman, you have testified to some degree about how you administered or took part in your grant program.

Is it true, or is it atypical, for instance, that other principle investigators might do the major part of the writing on any final report they might submit?

MR. KRAMER: I must object.

MR. SCHECTMAN: Major meaning more than fifty percent.

MR. KRAMER: It is highly speculative. The question ought to be whether he knows of anyone who has done more than fifty percent, not whether it could be. Anything could be.

MR. SCHECTMAN: Dr. Fishman has testified with respect to the role of the principle investigator in some general terms.

I am asking affect in general terms respond to the question if it would be atypical for other principle investigators to write themselves the major portion of any final report, study or investigation they might submit in the resolution of their grant.

THE HEARING OFFICER: You may answer, if you know.

A I would suspect that in a smaller grant that would be the case, if it is a grant that doesn't cover more than the principle investigator, secretary, assistant.

That would probably turn out to be a small report, too.

Q With respect to the grant you testified about, I think you testified that that was a very large grant.

A Well, no. It was a large grant. It is not among the largest that the university has had.

Q Is it however larger than most of the grants that are in affect at the university?

A If you give me that list again, I'll take a look.

MR. KRAMER: Just hand him the list. It's easier for you to hand him the list.

A It doesn't have the funds in here. I thought it had the funds in here. I think it is about--it is smaller than some of the large grants that--than most of the large grants at Belfer, and I think it is probably about the average grant now at Ferkauf.

At that time there used to be a lot more smaller grants than there are now.

Q I don't mean in dollar amount since we have the problems of inflation and so forth.

I mean with respect to the time alloted by the university for time to be spent by the faculty member on that grant, is it among the larger grants in terms of such time alloted?

A I was alloted fifty percent officially for that grant.

Q And your other fifty percent was spent in what activity?

A Teaching, dissertation supervision, committee work.

Q Now, of that fifty percent of your time which was alloted by the university to that grant, did you spend all of that time supervising people?

A I spentmore than fifty percent on that grant.

Q Of all the time that you spent on your grant, which you testified--which you testified fifty percent was alloted by the university, correct?

A For the record it was fifty percent. I spent much more than that.

Q Of the time you spent on your grant, did you spend all of it supervising people, other personnel?

MR. KRAMER: Objection. The witness has answered this question twice, Mr. Hearing Officer. First he said a huge amount and then he said, well, more than half.

MR. SCHECTMAN: It is conceded that he did not spend all of his time supervising personnel.

MR. KRAMER: I don't think the witness ever testified that he spent all of his time supervising personnel. The witness has been very frank on both direct and cross.

MR. SCHECTMAN: Question withdrawn.

Q Is it not then also true that on other grants, other grants likely to be smaller than the grant you testified to, that in those other cases a principle investigator might have spent more of his time proportionately than you did doing research?

A If there is no one else than himself, then of course that's so.

But you can have a grant with just one assistant and if you are working with him all the time, then you hve a lot of time that you are supervising him.

Q Now, you testified that there were faculty from other universities working with you on your grant, is that not true?

A One faculty member from ahother university. Assistants came from other university, too.

Q You did get assistants from other universities?

A Came to me from other universities.

Q Was that assistance paid for?

A When they came to work on the grant, they were paid by Yeshiva University, but they had come from outside of Yeshiva University is what I meant to say.

Q Were they consultants with you?

A Different consultants on the grant?

Q Yes.

A I also had friends for consultants.

Q And those consultants played what role?

A Once or twice a year I would go to see them or I would invite them to come look over everything that we were doing or some particular problem that they were competent at.

Sometimes I sent the staff up there to wherever they were, but more commonly they would come and spend a day or more listening to whatever the problem was and expressing an opinion.

MR. SCHECTMAN: No further questions of this witness.

Q (By Mr. Kramer) Dr. Fishman, you have told us that you had faculty from other universities on your research grant. What do you mean by that?

A Before they came to work on the grant, they would be working at some other university.

Now, one of these people was on leave of absence or on Sabbatical, I believe, from that other university and he came to work with me on the grant.

Q When he came to work--let's stay with him for a moment--when he came to work with you on the grant, did he spend all of this time working on that grant?

A In his case, he worked full-time on the grant and also taught at the school part-time as an additional source of income.

Q And for his work on the grant, did he receive payment from the university?

A Yes.

Q In the form of salary?

A Yes.

Q Did you select this employee?

A Oh, yes.

Q Did you direct his work?

A I did.

Q If he wanted time off, was it within your authority to give it to him?

A It was. I would have to consider whether we could get the work done or not if he took his time off.

Q But he would come to you for those kind of requests, would he not?

A Yes.

Q You told us with about one of these people from outside the university who came to work for the university. Was there another one?

A There was another man who actually left his job at another university in order to come to work on this grant with me.

Q And did he work full-time on the grant?

A He did, and he also taught at the univesity again part-time.

Q And for work on the grant, was he paid by the university?

A That was his full-time work and he was paid by the university.

Q A salary?

A Yes.

Q Who had authority to direct the work of this person?

A Just I.

Q Was there anyone else?

A Not as far as his full-time work was concerned.

Q You selected him, Dr. Fishman?

A Yes.

Q Did you do the interviewing?

A Yes.

Q You told us that faculty and students--

MR. KRAMER: Strike that.

Q You have told us that the faculty and students have representatives on the university negotiating committee in its negotiations with Local 1199.

Do those representatives include both graduate and under-graduate faculty?

A That was the case last time. I'm not as sure about it this time. I know I've been told about it last time. I haven't inquired this time.

Q Dr. Socol is involved in those negotiations?

A Yes, and I know that they are--I know this that would be the desirable--during the summer university whether he is able to get the people in that would like to participate in this, but that would be the way it would normally be done.

Q He would know more about this than you do, I take it?

A Yes.

Q You told us on cross that persons employed on grants other than faculty are bound by the university's regulations and personnel practices.

That was your testimony almost verbatim.

Who enforces those personnel practices and regulations in the first instance, if anyone?

A The principle investigator is expected to let the staff know that those are the practices. If he attempts to engage in practices which are not university ones, then other authorities will inform him that that is the case.

Q Mr. Schectman asked you, Dr. Fishman, whether the principle investigtor sends a requisition for personnel to his dean, and you said yes.

Are those requisitions generally approved by the deans in question?

A They are actually called payroll memorandum if it has to do with staff, and the dean knowing that the funds are there from the granting agency is just a transmittal for the form to the fiscal offices.

Q On cross there was reference to the council on social work education.

Would you tell us what function, to the best of your recollection, that counsel place in connection with the Middle State's evaluation?

A That's what I tried to do.

The council is the agent of the Middle States Association for theevaluation as far as the social work programs of the university is concerned.

Q At the medical school, what body, if any, stands in the shoes of the council on social work?

A There is a similar body for medical school accreditation that acts as the arm of the Middle States for that purpose.

Q Putting aside, Dr. Fishman, these two bodies,--

MR. KRAMER: Strike that.

Q Do you know of any similar body used by the Middle States with respect to the evaluation of Yeshiva College?

A No.

Q With respect to the evaluation of Stern College?

A No.

MR. SCHECTMAN: There was no--

MR. KRAMER: --by you, Mr. Schectman.

MR. SCHECTMAN: That there are no questions where these people were before.

MR. KRAMER: I'm now asking where they were before because I think it is relevant.

THE HEARING OFFICER: Overruled.

A I don't know as to any detail.

Q I'm not talking about specific rooms but in general terms.

A There is a building about two blocks away from the college where it was for many years.

I also heard that there was a period before this new building was really ready to move into--and the old building, I think the lease was up, or it had been sold to someone else--and during that period, I don't really know exactly where they were able to conduct their work, apparently other space that the university--other buildings that the university has at the--buildings that it has at the main campus may have had to be used during that time. It was a difficult transition time.

Q Is it your testimony, Dr. Fishman, that you made no substantive changes in the draft of the response to doctoral evaluation questionnaire, state education department, New York, prepared by Chairman Joel L.

Lebowitz of the physics department at Belfer and Employer's Exhibit 5 in evidence in this proceeding?

A No substantive change at all.

Q Did you discuss the substance of that report with Professor Lebowitz before it was written?

A I never saw it before the draft arrived.

I've never discussed it with him before the draft arrived.

Q At any time did Professor Lebowitz tell you that he exaggerated anything in the report or misstated anything in the report in order to increase the likelihood that the physics department would be evaluated successfully?

A No.

Q Dr. Fishman, during the past three academic years at Yeshiva, have promotions from one rank to another been accompanied by salary increases?

A Sometimes they have and sometimes they haven't.

Q Dr. Fishman, you have told us that there have been tenure and promotions grievances before the faculty review committee and that fiscal matters are excluded.

What other matters, if you can give us some examples, are within the province of the faculty review committee?

MR. SCHECTMAN: I object, Mr. Hearing Officer.

He answered this question directly. We can go back in the testimony. He was asked exactly what they do consider when it was first raised on direct examination.

On cross examination he further amplified what matters are properly before that committee.

We are only restating the record now one more time.

MR. KRAMER: We are not restating it one more time. The record on this matter is not complete. There is testimony about--on cross examination at least--about tenure and promotion and not fiscal.

It is unclear as I recall the line on cross, and we don't want the record unclear, counsel, as to what other matters may be taken up by this committee.

MR. SCHECTMAN: I think if we search the record, under direct examination he was asked the exact question of what came before this committee.

THE HEARING OFFICER: You may answer the question.

MR. SCHECTMAN: Note my exception.

A I believe I did say, and I do believe, that they are mostly matters of lack of promotion, non-tenure.

Any other non-fiscal complaints that faculty members might have could be brought to that committee;if he hasn't been reappointed and he feels he should have been reappointed, hadn't been treated fairly or respectfully or essentially anything else.

Any other topic could still be brought there.

I know of some dismissal cases, not in the last three years, but generally I know of some dismissal cases that were brought there.

Q Dr. Fishman, does Stern College for Women have a governance document?

A Yes, it does.

Q Do you know whether that's called a constitution or by-laws or whether it is called statutes?

A I don't remember what it is called.

Q But it does have such a document?

A Yes.

Q Does Yeshiva College have such a document?

A Yes, it has for each of those governing bodies that were mentioned.

Q Do you know of as a fact whether Erna Michael College has such a governance document?

A It should.

Q You don't know of your own knowledge, do you?

A No.

MR. SCHECTMAN: Your Honor, this witness was asked the same question under cross examination.

MR. KRAMER: Yes, the witness--by the way, the witness answered with respect to Erna Michael College, I school operation that's involved.

Q Putting aside, then, Erna Michael College and Teachers Institute for Women, would it be correct to state, Dr. Fishman, that all of the colleges in the university, whether graduate or under-graduate, have a governance mechanism and governance procedures?

A The ones I'm unsure about are Striar and Erna Michael and Teachers Institute for Women.

Harry Fischel I don't think needs to be considered. That's just a summer session of Bernard Revel.

And for all the others, I know there is a statute, a by-laws, constitution.

I don't know what they are called.

And the only one I have a slight doubt about is Bernard Revel.

Q Is it a fact, Dr. Fishman, that there is a welfare committee or concomitant thereof at each of the schools, whether graduate or undergraduate?

A There may not be an official welfare committee in a school like--in a small school where the whole faculty sits as a committee of the whole to consider whatever business comes up, then there would also be the welfare committee as a committee of the whole.

Q Putting that aside, do each of the other schools have a welfare committee?

A Larger schools,--all of the larger schools do.

Q Stern College for one?

A Yes.

Q Yeshiva College?

A Yes.

Q Belfer?

A Yes.

Q Ferkauf?

A Yes. Wurzweiler.

Q And that's so whether they are graduate schools or undergraduate schools, is that right?

A Yes.

Q Dr. Fishman, do you know whether the students played any role in Israel Independence Day becoming a holiday at Yeshiva College, Stern College, TIW, Erna Michael College, and James Striar School?

A They requested those holidays. They requested that. You see, the only point is that there be--that the state education department's requirements for the number of contact hours be met.

Now, within that, the university doesn't care whether this day or that day is a holiday. There are certain oblibatory school holidays that the university as a whole observes. Beyond that, there are possible choices of this one or that one, so that the end result sub-committee of the committee that planned them, and their purpose now that the programs have been planned is to screen the applications and to decide when the application can be accepted or whether it can be accepted.

Q When you say an operational sub-committee, what do you mean, Dr. Fishman?

A One or two of those people that were on the planning committee which remains as a standing committee for responsibility for the program as it develops, commonly I would say one from the undergraduate school is involved and one person from the graduate school is involved who will actually be involved in going through the records of the applicants when they are sent to them by the registrar's office.

Q I think there is testimony on cross that there are admission committees in, I believe, Belfer and Ferkauf.

Are there also admission committees in each of the undergraduate schools, to the best of your knowledge?

A I believe there are. I know for sure for the college, because I've had some spill-over from their admissions committee this past week.

But there must be one for Stern, too.

Q You told us, Dr. Fishman, at the outset of your cross, that the faculty committees at the schools have an in-put, that was your word, re: or about the hand-book, the university hand-book, which is Employer's Exhibit 51 in evidence.

Would you tell us, to the best of your recollection, what kind of in-put you are talking about?

A I think this came up in connection with the revision of the tenure policy and there I know that the welfare committee at the various schools were asked to make comments, had sent in comments to the university committee, the university welfare committee that was going to draft the final version of the revised tenure policy.

Q That's from each school whether it was a graduate school or an undergraduate school, is that correct?

A Yes.

Q Is that also so with respect to the development of the hand-book in themid '60's?

A In the mid '60's that was true, but there was also an accummulation of prior policy that just had to be brought together, for new policies, for study of policies, that was true.

Q Following the in-put you have just described, what body or bodies or official or officials made the determination about what would go into the faculty hand-book?

A The final determination was made by what was called the dean's committee, which later became the executive committee, then on to the president, board of trustees.

Q Did they play an active role in that, Dr. Fishman?

A The latter, the dean's committee and the executive council, yes.

Q You testified on cross that medical students often go in for PHD and careers in research.

Since you have so testified, Dr. Fishman, have you given some consideration to this?

A Did I say they often do that?

Q Yes.

A Well, we have the Sue Golding division particularly for medical researchers, and it is a small division relative to the size of the medical college.

I thought I was being asked whether doesn't this happen in the field of medicine, that some people go for academic degrees, and I said yes, and perhaps more and more interest in that.

The Sue Golding division is a small division relative to the medical college.

Q To your best knowledge, Dr. Fishman, about what percentage of your MD graduates out of Einstein go for PHD?

A The graduations happen at the same time, and out of a graduating class that's more than one hundred,

PROCEEDINGS

HEARING OFFICER BANKS: The hearing will be in order.

This is a resumption, the last session having been on July 11. I believe the appearances are the same this time except on this case Mr. Bodner is appearing.

We finished with the witness that we had on the stand.

Who is supplying the witness today?

MR. KRAMER: We are calling Dr. Sheldon Socol.

MR. SCHECTMAN: Before the witness takes the stand, Mr. Hearing Officer, there was a request to produce that was made at the last hearing and it wasagreed between the parties that the petitioners would make the best efforts in acquiring some of those materials.

I can report on that at this time and I would also like to offer some of these materials into evidence.

MR. KRAMER: May we go off the record?

THE HEARING OFFICER: Off the record.

(Discussion off the record.)

THE HEARING OFFICER: Back on the record.

MR. SCHECTMAN: After a brief discussion with counsel for the University, off the record, we'll confer on these materials and offer them into evidence at a later time.

THE HEARING OFFICER: Very good.

MR. KRAMER: Dr. Socol, please.

SHELDON SOCOL, having first been duly sworn by the Hearing Officer, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kramer) What is your full name and address?

A Sheldon Socol, 136-18 71st Road, Flushing, New York, 11367.

Q By whom are you employed?

A Yeshiva University.

Q How long have you worked for Yeshiva University?

A 1958.

Q What is your position?

A Vice president of business affairs and secretary of the University.

Q How long have you held that position?

A Approximately two and a half years.

Q What did you do for the University before that?

A From '58 to about '60, I was assistant bursar. From '60 to about '68 I was associate bursar--from '60 to '68 I was director of student finances. From about 1971 I was secretary of the University and then vice president for business affairs.

Q Dr. Socol, what are your responsibilities as vice president for business affairs?

A They are manifold but basically I would say they relate to general administration and planning, fiscal and business management, personnel matters and general responsibility for such departments as physical plant, auxiliary services and security and safety, etc.

Q Let's deal with physical plant, sport and auxiliary services for a moment, Doctor.

Is buildings and grounds within the definition of what you gave us?

A Yes.

Q Is there a single buildings and grounds department for the entire University?

A Yes.

Q And its director reports to you?

A That's right.

Q Is security within the term "physical sport" and auxiliary services?

A Yes.

Q Is there a single security department for the entire University?

A Yes.

Q And does its director report to you?

A Yes.

Q Is data processing one that classification?

A Yes.

A The graduate school.

Q And the Stern College is an undergraduate school, is it not?

A Yes.

Q In addition to being charged with the control of physical plant, sport and auxiliary services, you are also involved with general administration and planning?

A That's right.

Q Would you tell us what that function involves?

A That means working with the deans, the other vice president, senior vice president and executives of the institution with respect to operational requirements, short and long term planning, fiscal requirements, organizational and structure of the institution.

Q You also told us that one of your functions is business and financial planning, what does that involve, Dr. Socol?

A That involves not only the maintenance of fiscal records with regard to expenditures and liabilities of the University but also making certain that income due the University is timely received, recorded and accounted for. Disbursements that are due, are properly recorded and made in a proper manner and that assets of the institution are properly protected.

Q You told us that you are involved with personnel, what does that mean?

A It would be helpful to characterize the personnel within the university as two kinds, faculty and other than faculty.

Q Would you tell us about your function with respect to personnel, other than faculty?

A Other than faculty, it is my basic responsibility to make certain that the salary and wages are in conformity with either contradural agreements that we have, that working conditions are being properly adhered to. That grievances when they arise are properly resolved.

Our relationship with members of the staff protect both the interests of the employees and the interests of the institution.

Q Would you tell us about your role, in a general fashion, with respect to faculty personnel?

A My involvement with faculty personnel is of a different nature. Primarily my involvement relates to the staffing of individual schools with regard to the fiscal consequences of appointments and the expanding or contracting the number or the level of the faculty involved.

Q Do you sit on many administrative committees?

A Yes.

Q Do you sit on certain faculty committees?

A Yes.

Q Could you just tell us, I know it is a long list but give us a feel for the kinds of committees that you serve on at the University?

A Well, I serve on the Committee of Ceremonial Occasions which takes care of the University's ceremonies.

I'm on the Academic Computer Committee which is other than the administrative computer. It is the computer physically housed at the College of Medicine used by the University for research and for scientific purposes.

I'm on both the undergraduate as well as the graduate council.

I'm on the Yeshiva College Senate.

There are many, many other committees.

Q Now, Doctor, are you also chairman of a joint committee of the graduate and undergraduate councils?

A Yes.

Q Would you tell us about that?

A I don't recall the precise date but I believe it was in the first week of June of 1974 that at a meeting of the graduate council which is composed of graduate faculty, graduate students as well as members of the administration, it was suggested by a member of the faculty of one of the graduate schools that it would be helpful to them and indeed to the institution if the graduate council as a committee of the whole, would undertake to review academic priorities within the institution and the allocation of resources in accordance with those priorities.

It was further suggested at that meeting that this could not be done in a meaningful sense by the graduate council alone and it would be helpful and expected that the undergraduate council join them as a part of the committee as a whole.

I was asked to serve as chairman of this joint committee.

MR. KRAMER: Will you mark this Exhibit 78, please.

(Employer's Exhibit 78
marked for identification.)

Q Dr. Socol, I show you Employer's Exhibit Number 78 marked for identification, it is what appears to be a letter on Yeshiva University stationery, vice president for business affairs office, indicated July 18, 1974 and it appears to be sent out under your signature, even though your signature does not appear there.

Was this letter in fact sent?

A Yes.

Q And under your signature?

A Correct.

Q To whom was the letter sent?

A To all members of the undergraduate and graduate council.

Q Why was this letter sent out?

A The letter explains that this is in response to a discussion that took place at the graduate council meeting of June 3 and the further conversations that I had had as chairman of this new committee with Rabbi Gross who is chairman of the undergraduate council and at the request of the graduate faculty that we use the opportunity of the summer to begin work of the committee, I called a meeting for August 12.

MR. KRAMER: I offer Exhibit 78 in evidence.

MR. SCHECTMAN: No objection.

THE HEARING OFFICER: Employer's Exhibit 78 is received in evidence.

(Emplcyer's Exhibit 78 was received in evidence.)

Q Now, Doctor, in addition to being on all the committees that you have just described, are you also a member of the University budget committee?

A Yes.

Q Do you play a role in budgeting?

A Of course.

Q Would you describe that role?

A Well, the role is actually two-fold and it overlaps.

I have been a member of the University budget committee since it was established, before I became vice president for business affairs and I worked with Dean Rabinowitz who was chairman of that committee since 1971 in regard to formulating budgets for the various components, component parts of the institution and for the institution as a whole.

Q Was a budget committee appointed?

A Yes, by the president.

Q Who is on that committee?

A Dean Rabinowitz is the chairman, I'm on the committee, Professor Silverman is on the committee.

Q Dean Rabinowitz is dean of which school?

A Erna Michael College.

Q Is that an under-graduate school?

A Yes.

Q And Professor Silverman, what is his function in the University?

A University registrar.

Q For all the schools; is that correct?

A Yes.

Q This committee is appointed by the president?

A That's right.

Q Would you tell us what the purpose of the committee is, what it does.

A The purpose of the committee is to provide for a vehicle to assure fiscal stability and viability of the institution.

Q When was it first created, Dr. Socol?

A It was created either in late '70 or early '71.

Q In response to particular events or circumstances?

A Yes.

Q Would you tell us about those, please?

A The university's fiscal year which ended at 6/30, 1970 indicated a significant deficit and the fiscal crisis which developed at that time forced the institution to take several steps to counteract that crisis, and one of those steps was the establishment of a Universitywide budget committee to make better utilization of existing resources and to make certain thatour income and our resources and our expenditures were more consistent with each other.

Q Was a committee on integration and coordination created at that time?

A Yes. One of the things that was established was a committee of integration programs.

Q What was the role of that committee?

A To evaluate the course offerings in essence and the faculty strengths in the various schools to see in what degree--to what degree we were duplicating our efforts and to see how we could strengthen our academic efforts.

Q Did that committee function?

A To the best of my knowledge it did.

Q Was there also a committee set up at that time on class size?

A Yes.

Q Will you tell us what the role of that committee was?

A The role of that committee was to establish gui[illegible]lines for the various schools of the instituti[illegible] that there would be known, predetermined parameter in the area of enrollment before a course was offerred.

Q You made reference to a committee on coordination and integration and a committee on class size.

Will you tell us from whence the membership of those committees were drawn?

A From faculty and administration. Cetainly it may even have included students, I don't recall.

Q From all the schools?

A Yes.

Q Graduate and under-graduate alike?

A Yes.

Q Let's return to the budget committee, Dr. Socol.

How does the budget committee go about accomplishing its purpose?

A Its first approach is to acquaint and inform members of the University committee of the facual basis of the fiscal position of the institution.

At the same time, by meeting with various groups in the institution, the committee is informed of the programs, activities, desires of the various groups within the institution.

And through serious discussion and cooperative approach, we've been able to indeed accomplish a reduction in the deficit.

Q I think Dr. Fishman when he was on the stand testified in words or substance that budgeting is an ongoing process, was that a correct statement?

A That's correct.

Q Would you explain what that means?

A Budgeting begins with where we have been, so there is a frame of reference of whatour expenditures were last year and the year before, what we have been able to do in terms of activities with those dollars.

We try to translate those dollars into a pattern of the future. A budget is a fiscal blueprint in terms of what activities the institution has and what it would cost to continue those activities, to reduce or to expand them.

Q I used the term cost sub-center, will you tell us what that term means?

A A cost center would be a refinement of a major cost center.

For example, the department of physics would be a sub-cost center within the Belfer School.

Q Does the budget committee meet with the administrative officer of each of the major cost centers?

A Indeed we meet possibly more frequently or less frequently based upon the nature of the activity, but we meet with every department head.

Q The dean or a dean would be an administrative head of a cost center that would be a school?

A Yes.

Q And a department head would be the head of a cost center that was a department; is that correct?

A Yes.

Q Now, is the budget or a draft budget prepared for each of the major cost centers?

A Yes.

Q By whom, Dr. Socol?

A It is prepared by the chief administrator being the director of that cost center.

Q After consultation with the budget committee?

A After consultation with the budget committee and in compliance with University-wide budget guidelines.

Q Now, to whom is the draft budget submitted?

A The draft budget is submitted to my office where it is reviewed by myself and chairman of the budget committee and from there it is submitted with our recommendations to the president.

Q Is there usually agreement between the budget committee, your office and the administrative officer who submits the budget?

A Generally the budgets when they are finally submitted are a reflection of the general consensus that was reached.

Q When there is disagreement, how is disagreement resolved?

A At a joint meeting with the budget committee, the president and the chief administrator of the cost center involved.

Q Is that so whether the cost center is a graduate or an under-graduate school?

A Yes.

Q Whether the cost center is a department or a school?

A Correct.

Q Now, Dr. Socol, is the rather large degree of consensus that you have just described furthered by the existence of University-wide budget guidelines?

A   Yes.

Q   Would you explain to us how these guidelines come about?

A   Periodically, either myself as vice president for business affairs or dean Rabinowitz as chairman of the budget committee or jointly, we raise for consideration by the executive council, a series of budget guidelines to be used which, after discussion, and perhaps modification, are then submitted to the president for his approval.

Q   Once those budget guidelines are approved by the president, are they disseminated?

A   Yes, they are reduced to what in the past has been a letter from myself to the individual dean or director or major administrator, informing him of the budget guideline.

Q   This executive council you referred to, that contains representatives of both the graduate and undergraduate schools?

A   That's correct.

Q   There isn't a separate executive council for graduate or undergraduate schools, are there?

A   No.

Q   There aren't separate guidelines for graduate and undergraduate schools, are there?

A No, the guidelines are university-wide.

MR. KRAMER: 79.

(Employer's Exhibit 79 marked for identification.)

Q Dr. Socol, you have told us that the budget guidelines are disseminated over your signature; is that correct?

A Yes.

Q University-wide dissemnation; correct?

A Yes.

Q Who gets copies of these guidelines?

A Every dean, director, major administrator who is responsible for a cost center.

Q Dr. Socol, I show you Employer's Exhibit marked 79 for identification, apparently again on the letterhead of Yeshiva University, vice president for business affairs, it appears to be a letter to "Dear Colleague" under date of August 15, 1973, signed by you; are you familiar with this letter, Doctor?

A Yes.

Q Did you actually send this letter?

A Yes.

Q Would you tell us what it represents?

A This letter represents the notification to deans, directors and administrators providing them with budget guidelines for the fiscal year ending 6/30/74 and other related fiscal data.

Q Let's turn to page 2 of this exhibit and more particularly to paragraph numbered one on that page.

This paragraph states: "The University freeze on the hiring of new non-academic personnel will remain in effect during 1973/74.

This freeze--"

MR. SCHECTMAN: I object to him reading the exhibit into the record. The exhibit is before the witness and has been marked for identification and speaks for itself.

MR. KRAMER: Normally, Mr. Hearing Officer, I would withdraw the question at this point. I'm going to ask a series of questions about this exhibit. It is a rather lengthy exhibit, it has several numbered paragraphs that I'm going to deal with in series and I thought it would be easier for the reader of the record, rather than to refer to the naked document, that we could have the text of the document in the record so we won't have to go back and refer to it each time.

I would like to continue this way.

MR. SCHECTMAN: I think the paragraphs are numbered, the pages are numbered, reference can be made to them and to their substance without going into the unnecessary delay and the cluttering of the record of reading a four-page exhibit into it.

MR. KRAMER: I'm not going to reak the four-page exhibit into it.

THE HEARING OFFICER: I assume he wouldn't be reading it in detail.

I'll overrule the objection.

You may proceed.

MR. KRAMER: "The University freeze on new non-academic personnel will remain in effect during 1973/74. This freeze includes the hiring of replacement personnel as well as personnel for proposed new positions.

A freeze on overtime also remains in effect. In extenuating circumstances, requests for a variance to these policies can be submitted to this office."

Q Are you familiar with that pargraph, Doctor?

A Yes.

Q You actually wrote that, did you not?

A In essence, yes.

Q Will you tell us what the general essence on the freeze on the hiring on new non-academic personnel was?

A That occurred when the fiscal crisis in 1971 became apparent and the president, chairman of the board and vice chairman of the board convened a meeting of the executive council where the fiscal problems of the

University were discussed.

One of the first directives in regard to the fiscal crisis was the freeze on hiring the new non-academic personnel.

Q Did this freeze apply to all of the schools of the University?

A Yes.

Q Graduate and under-graduate?

A Certainly.

Q The paragraph tells us that a freeze on overtime also remains in effect. When did this freeze start?

A The same time.

Q Was it also University-wide?

A Yes.

Q It applies to both graduate and under-graduate schools; correct?

A Yes.

Q The variance referred to in the last sentence is obtained from your office; is that correct?

A Yes.

Q Is that so for graduate and under-Ograduate schools?

A That's correct.

Q No difference between Belfer and Yeshiva College?

A No difference.

Q Let's turn to the second paragraph on page two, Doctor, a paragraph which states "Budgets for 1973/74 cannot exceed the approved or actually 1972/1973--"

MR. SCHECTMAN: I object again. Counsel for the University is reading these paragraphs verbatim. The first paragraph could have been alluded to by reference. The examination was merely as to the overtime and hiring freeze. He is insisting upon reading this document into the record and I'll renew the objection at this time.

MR. KRAMER: I'm not going to read the entire document into the record. These are short paragraphs.

THE HEARING OFFICER: All right.

Q "Budgets for 1973/74 cannot exceed the approved or actually 72/73 expenditure level, whichever are less.

This means that all inflationary costs and salary adjustments must be absorbed within existing funding levels."

Doctor, are you familiar with paragraph two of the letter?

A Yes.

Q The first sentence of that paragraph applies to both graduate and under-graduate schools?

A Yes.

Q Ferkauf, Stern, Belfer and Yeshiva and all the other schools?

A Yes.

Q There is a reference to existing funding levels in this paragraph, what does that sentence mean to us in lay terms?

A That relates to the prior level of University funds allocated to a given school, program or project.

Q Now, Doctor, the third paragraph of this letter and out of deference to my brother, I won't read it, it is a long paragraph, I'll read one sentence: "Salary increases must be absorbed within existing funding levels."

What does that mean?

A That's a mandate to the dean, director or administrator that he must operate his school program in such a manner that sufficient dollars are available to cover mandated increases for members of staffs for that school or program and for other increases which may be necessary.

Q In other words, additional funds would not be provided from University sources to take care of those matters; is that correct?

A Yes.

Q Is that so for all of the schools, graduate or under-graduate, it makes no difference?

A That's correct.

Q Let's turn to paragraph 4, it is a short paragraph and it states "Without specific approval, salary charges for personnel in a school or department cannot be transferred from sponsored research or grant funds to university funds."

Are you familiar with that paragraph?

A Yes.

Q What does that mean in lay terms, to people who are not university administrators?

A At times, personnel who have been funded though a sponsored project or grant, find themselves in a position where either the grant is not renewed or renewed at a different funding level and their source of funding is no longer available.

This sentence or paragraph means that they cannot be transferred to the funding source of the University funds without specific approval.

Q Is that so no matter where the research is performed?

A That's correct.

Q Whether it is performed at Stern, Yeshiva--

A That's correct.

Q Let's turn to the fifth paragraph, it is a long paragraph and I'll read the entire paragraph.

MR. SCHECTMAN: I renew the objection at this time. I ask the Hearing Officer to read the paragraph, make a ruling as to whether it is necessary to read it.

A Instructions were issued indicating that the school or department cannot expect to use all of those funds by any means.

Part of those funds must be used to decrease the existing deficit. It goes on further to say, to what degree a department may have use of such funds for their purposes are subject to discussion with the budget committee and approval of the president.

Q The budget committee is made up of the dean of Erna Michael College, yourself and the registrar; is that correct?

A Yes.

Q Let's turn to the sixth paragraph on page three.

A paragraph that says "Every dean and director was charged by the president two years ago with the responsibility of reducing the direct 1970-71 operating deficit during 1972 by a minimum of fifty percent."

Is that a correct statement?

A Yes.

Q What is a direct operating deficit?

For internal management purposes, we have been calculating budgets on the basis of direct income which is the income directly attributable to a school, department or unit and its direct expenses which are expenses which, in essence, the dean or director has control over and which relate directly or specifically to the operation of the school.

At a school it would be the faculty salaries or laboratory supplies.

In a working department it would be the salary of the personnel action in that department and the goods and supplies they actually order and purchase.

Q Now, Dr. Socol, is this accounting system the same for each of the schools?

A It is the same for each school, department and activity of the institution.

Q Mandated by your office; is that correct?

A Yes.

Q The paragraph continues "This objective was continued during 1972/73", is that correct, a correct statement?

A Yes.

Q What does that mean in lay terms?

A It means that the effort to further reduce the direct expense will be continued.

Q It concludes with "Our efforts during 1973/74 must be directed to further reducing the operating deficit level. One step in the budget finalization process for 1973-74 will be an evaluation of the progress made by each school and department of fulfilling by this date, the presidential charge as outlined above."

Who has made that evaluation, Dr. Socol?

A The evaluation actually took place as the budget committee met with each dean and director in terms of determining justification for the budget level requested for the following year.

Q That evaluation is made by the budget committee, is it not?

A Yes.

Q A central university committee?

A Yes.

Q The goals and aims embodied in paragraph six on page three, do they apply to all graduate and undergraduate schools?

A Yes.

MR. KRAMER: I offer Employer's Exhibit 79 in evidence.

MR. SCHECTMAN: No objection.

THE HEARING OFFICER: Employer's Exhibit 79 is received in evidence.

(Employer's Exhibit 79 was received in evidence.)

Q Dr. Socol, were guidelines similar to those embodied in Employer's Exhibit 79 distributed for the 1972-73 school year?

A Yes.

Q And are such guidelines in the planning stage for 1974-75?

A Yes.

Q Now, let's turn to faculty salaries. With the exception of Belfer, a graduate school, Strier, an undergraduate school, Erna Michael College, an under-graduate school, and the Bernard Revel Graduate School, how have faculty salaries been set in recent years and by that I mean since on or about 1969, in or about 1969.

A It was about '68 or '69 when the university and the faculty of several schools both graduate and undergraduate established a salary scale for respective members of their faculties.

Q When you said established a salary scale, Dr. Socol, what do you mean by that?

What do we envision when we say this?

A We should visualize a tabulated form of salary depending upon academic rank, years of service in that rank.

Q Is there such a salary schedule for the Ferkauf?

A Yes.

Q Is there such a faculty set-up for Yeshiva College and Stern College jointly?

A Yes.

Q Is there such a schedule for Wurzweiler?

A Yes.

MR. KRAMER: 80A and B marked Exhibit 80 for identification.

(Employer's Exhibit 80A, B marked for identification.)

Q Dr. Socol, I show you Employer's Exhibit 80A marked for identification that is in front of you now, and more particularly the top set of numbers which are headed Ferkauf.

Is that the salary schedule for the Ferkauf School?

A Yes.

Q Now, the second set of numbers reads Yeshiva College, Stern College; is that the salary schedule for Yeshiva College and Stern College?

A Yes.

Q And finally I show you Employer's Exhibit 80B, is that the salary plan for Wurzweiler School?

A Yes.

Q Wurzweiler School is a graduate school, I take it.

A Yes.

Q Ferkauf School is a graduate school?

A Yes.

Q And Yeshiva and Stern Colleges are under-graduate schools?

A Yes.

Q These schedules, and I'm referring to the ones before you, Doctor, were promulgated in or about 1969 for the first time; is that correct?

A Yes.

Q Do you know whether there was slotting required when these schedules were promulgated?

A As best as I'm able to recreate from my files and records, it would appear that when the faculty scale was introduced, existing members of the faculty were assigned, slotted into an appropriate level of the scale.

Q That's for all the scales that I have in my hand, 80A and 80B.

A That's correct.

Q That was in 1969 and 1970.

New hires, or acquisitions from any source, would you tell us how salaries were increased in the schools covered by Exhibits 80A and 80B during the period 1969 and 1970 through 1972-73?

A In essence, each year, a member of the faculty advanced one step, based upon his rank and years of service as the scale provided.

There was one year, 1971,72, when the institution plan dated an economic freeze on salaries due to the fiscal crisis which I described and no one within the institution received a salary increase during '71 and '72.

Q And that's so whether it is an undergraduate or graduate school?

A Yes, or other than that.

Q It didn't make any difference whether the faculty member was in the bargaining unit of the schools sought here or not; correct?

A Yes.

Q Uniform.

A Correct, yes.

Q Was any adjustment made in the school on Exhibit 80A for the 1972-73 school year, an adjustment that doesn't show on here?

A There was one adjustment for the academic rank referred to as instructor. We without real adjustment to the scale, instructors who were at maximum, received an additional five hundred over and above the scale.

Q Now, let's turn for the moment to the salaries for 1973-74. For 1973-74 and I'm referring to the scales, 80A and 80B at theirpoint, was any adjustment in the scales themselves made for 1973-74?

A Not really.

Q Even though the scales themselves were not adjusted, was a pay adjustment made for faculty members who were with the faculty welfare committees of the undergraduate schools to discuss this and we indicated to them some time, if I recall, early last summer, that this was the posture of the institution with regard to those individuals who were at maximum.

In regard to the Ferkauf School, there were several meetings taking place with the dean and with members of both faculty and department chairmen with regard to the budget of the Ferkauf School for the 1973-74 fiscal year and this was casually discussed there as an institutional decision.

With regard to the Wurzweiler School, there were no discussions other than with the dean.

These are the four schools related to the scale.

Q There were discussions with the welfare committee at Yeshiva College and Stern College?

A Yes.

Q Those are undergraduate schools?

A Yes.

Q And there were also discussions as you just characterized them at Ferkauf and Wurzweiler?

A Yes.

Q Now, Dr. Socol, Belfer Graduate School, Stryer, an under-graduate school, Erna Michael, an undergraduate school and Revel, a graduate school do not have pay scales as those found in 80A and B; correct?

A That's correct.

Q Do they have published salary scales?

A No sir.

Q Do they have unpublished salary scales?

A They do not.

Q Do the facultyat Belfer receive a salary increase for 1973-74?

A Yes.

Q Was it across the board?

A Basically, yes.

Q And approximately what percentage was that increase?

A Five percent.

Q Was it essentially the same treatment given at Erna Michael College and--

A That's correct.

Q And you have told us that the top rated faculty at maximum of scale in the schools listed at 80A and 80B received a five percent increase, is that correct?

A That's correct.

Q Did the budget committee meet with the welfare committee or any other committee at Belfer in order to determine that the five percent increase--approximately five percent increase would be given?

A It did not.

Q Did it meet with any welfare committee at Erna Michael College?

A It did not.

Q Did it meet with one at Revel?

A It did not.

Q Did it meet with one at Stryer?

A It did not.

Q Did it meet with some kind of a committee other than what might be called a welfare committee at any of the schools to arrive at that increase?

A No, not for that year.

Q Dr. Socol, are you familiar with tuition levels that exist in each of the various schools within the university?

A Yes.

Q Dr. Socol, what is the most significant factor or what are the most significant factors let's put it that way, that go into determining what division levels will be in a particular school at a particular time, if you know?

A Well, basically it relates to what our enrollment patterns are, what other institutions are charging, what degree of student financial aid we have available and at what level we can hope to attract the student who is a good academic student, in terms of our pricing indeed there is no pattern.

Q Universities don't have a uniform pattern in this regard?

A No, they do not.

Q Dr. Socol, faculty members are hired at Yeshiva University each year, are they not?

A Yes.

Q Do you have a role in determining what salary is to be paid to a new hire?

A Yes.

Q Would you give us a feel for what that role is?

A Generally it relates to consultation discussions with the dean of the respective school or the vice president for academic affairs who initiates either the search for a potential new appointee or after a new appointee has been interviewed and acceptable academically or otherwise and we would discuss where the individual would be slotted in with regard to the existing salary scale if there is one or the perimeters of the salary if there is not one, what the funding sources would be and what the long range fiscal implications of such commitments would be.

Q Do you have a decision-making role in this function?

A Yes.

Q Tell us about that.

A In general we try to approach academic life by arriving at decisions by consensus but indeed if I felt that a given situation was beyond institutional philosophy or policy, and I couldn't support that decision, I would not act upon it which would mean in essence that an individual could not get paid, could not be appointed.

Q Would it be fair to say, Dr. Socol, that you have an effective veto?

A I would have an effective veto until overruled by the president, yes.

Q Have you in fact exercised that veto?

A No.

Q Have you engaged in discussions about --

A Yes.

Q Is that the normal way you operate?

A Yes.

Q I can give examples of salary requests that have changed significantly from the time that they were submitted to me. But through the process of discussion and cooperation, there was a general consensus and agreement that the appointment could be consummated.

Q Would it be a fair statement that salary levels for new hires are not established by the deans of particular schools?

A Certainly not so.

Q They are established in this process of consensus that you described?

A Yes, within the perimeters of institutional policy.

Q Let's turn to the subject of research grants.

Would you tell us from your prospective how a faculty member goes about securing research grants?

A By and large members of the faculty are quite sophisticated and knowledgeable about the specifics of which federal agencies, individuals or foundations have funds to distribute for research or sponsored activities, what they are interested in and what the mechanics are for about going about for a proposal.

It varies from school to school as to what departments are involved or faculty members are involved.

But, the individual who conceived of the idea, prepares the proposal, solicits the support of the dean and the proposal is submitted to the funding agency.

Q Now, Dr. Socol, do many of the grant proposals come across your desk?

A Yes, many do.

Q And is it common to find, particularly on the larger grants that the names of particular faculty personnel are specified other than the principal investigator?

A Yes.

Q Is it also typical on grants to have the number of research assistants and clerical supports specified in the cost?

A Yes.

Q Who selects these faculty other than the principal investigator to work on a particular grant?

A To the best of my knowledge it is basically the principal investigator.

Q You don't do it, do you?

A No.

Q Does the academic vice president do it?

A No sir.

Q To your knowledge does the dean do it?

A No sir.

Q Who selects the research personnel towork on the grants, assistants and research associates and others?

A The principal investigator.

Q Who selects the clerical people to work on the grants?

A In essence it would be the principal investigator.

Q And by "select" you mean hire?

A If it is a new hire, yes. If we are dealing with people already aboard, the principal investigator may have to draw from people presently on the staff.

Q I would say it that employment on a grant is a valuable source of summer income among other things to faculty members?

A Yes.

Q Principal investigator and others?

A Yes.

Q You're chief financial officer of the University?

A Yes.

Q Are the personnel employed to service these grants, principal investigators and others, are they employees of the university?

A Of course.

Q Do they appear on the university payroll?

A Of course.

Q Does the university pay workman's compensation for them?

A Yes.

Q Does it pay social security for them?

A Yes.

Q Does it cover them with its other liability insurance policies?

A Yes.

Q And do the normal university personnel control policies and measured applied to these personnel?

A Institutional personnel policies are applied to to these personnel.

Q They are not employees of the grant investigator, are they?

A Certainly not.

Q Doctor, putting aside the medical school, does the university have a personnel department?

A It does not.

Q By the way, do any of the schools--putting aside the medical school again--have a personnel department?

A No.

Q Dr. Socol, is there anyone in your office who supervises the work performed under research grant or under research grants?

A No.

Q For that matter under training grants?

A No.

Q Who directs the work of the personnel engaged on a particular research grant or grants?

A The principal investigators responsibility are both in terms of assurances to the university and to the funding agency that the sponsored project will provide as the proposal indicated and specified.

Q The principal investigator directs the work of all personnel on a project; is that correct?

A Yes.

Q Whether they are faculty members, research assistants, clerical employees or student employees?

A That's correct.

Q Does he have the authority to reprimand them?

A Yes.

Q To dispense with their services on the grant?

A Yes.

Q To dispense with their services all together where they are not otherwise protected?

A Yes.

Q Does the principal investigator have the authority to grant time off?

A He has the authority to modify the schedule but the perimeters are the policies--

Q Within those policies--

A Within those policies, yes.

Q To whom is the grant money given, Dr. Socol?

A The grant is an obligation, a responsibility of the university. All grants funds are issued to, made payable to the institution, the university.

Q To whom does the university look for the management of the project that is the object of the grant?

A The principal investigator.

Q Dr. Socol, do the constituent schools of the university have their own checks?

A Yes.

Q Would it be safe to say that there are several disciplines at Yeshiva College?

A That's correct.

Q That's an under-graduate school; correct?

A Yes.

Q At Yeshiva College the same salary schedule applies to the various disciplines there, does it not?

A Yes.

Q Dr. Socol, are you familiar with how the salary of dollar appropriation is sought for clerical employees under a grant, how is that number set by the principal investigator?

A Well, sime all secretarial clerical level employees at the institution are either union or union related, the perimeters of their salary scale are determined by contractual or commitments made by the university with respect to the salary level and fringe benefits of such employees.

Q That's not so with respect to research associates, is it?

A No.

Q Or other faculty members?

A No.

Q Their salary is set by the principal investigator;

is that correct?

A Yes.

MR. KRAMER: I have no further questions of this witness at this time.

THE HEARING OFFICER: We'll take a temporary recess.

(Recess was taken.)

THE HEARING OFFICER: On the record.

We'll break for lunch now until 12:30.

(Whereupon at 11:50 a.m. the hearing adjourned for lunch.)

AFTERNOON SESSION

(12:45 p.m. the hearing resumed.)

THE HEARING OFFICER: The hearing will be in order.

CROSS EXAMINATION

Q (By Mr. Schectman) Dr. Socol, on direct examination you testified that you were the vice president for business affairs.

A Correct.

Q And also a member of the budget committee and were accordingly familiar with the budget's maintained at the university for the various schools at the university as a whole.

A Correct.

Q Is it not the dean of the individual school hiring a new faculty member who first submits a recommendation as to the incoming salary rate of that prospective faculty member?

A It's the dean who initiates the action and who begins the discussion which could be the recommendation, yes.

Q You will meet at least annually with the dean for the preparation of the budget at the individual schools, will you not?

A Well, as I described, the budget is an ongoing process. It's not an annual meeting. It's a series of meetings which take place consistently.

Q Generally at what time of the year is the budget prepared?

A I want to reemphasize the point that that is an ongoing process. We never finish one before beginning the other.

Q In the preparation of all the budgets for all the schools in the university, will you always speak to the department chairman of every department of every school of the university?

A Yes. Dean Rabinowitz or myself or in most cases, jointly, we meet with the major administrator, the director of every department of the institution. And indeed we meet with students and faculty groups and other groups as well.

Q So that even to some extent, the entire faculty have some advisory role in the formulation of a budget?

A Yes.

MR. KRAMER: We would so stipulate, Mr. Schectman.

Q Does your office maintain data regarding the number of full time faculty at the undergraduate schools and at the graduate schools?

A We would have basically such data, yes.

MR. KRAMER: May I have that question read back, please?

(Read back.)

Q And does such data include reference to the positions they hold?

A Will you explain what you mean?

Q I mean, for instance, instructor, associate professor, assistant professor --

A The material we maintain with regard to faculty are really by-products of other data that we need such as physical data. We have their specific appointment and in other cases, we have merely their rank, academic rank.

Q Does not your office keep data which could be used to reflect the relative salaries paid per rank on the average for faculty members at the graduate schools as measured against those of the undergraduate schools?

center and the graduate center.

Q The graduate center services the Stern campus?

A The midtown center, yes.

Q Is there a separate center which services the Einstein school and the Medical Center?

A Yes.

Q You testified with respect to a joint committee being formed out of the graduate council and undergraduate council, did you not?

A I described a committee of the whole --

Q Made of components of each.

A The whole, everyone on both councils.

Q It's a consolidation of both those committees.

A For the purpose of the agenda item, yes, I guess you can call it that.

Q And was that committee formed after the petition herein was filed?

A Yes, that was formed in June.

Q Has that committee had a formal meeting as of this date?

A No, sir. The meeting is not scheduled to be held yet.

Q You testified as to a committee on integration.

A Coordination and integration.

Q Are you on that committee?

questions as to why the Belfer School is where it is -- I think we have dwelled on this long enough. I would rather have him answer the question than argue about this with every witness that's put on.

MR. SCHECTMAN: Can we have the question answered?

HEARING OFFICER: As long as it doesn't take us into some far distant time in the past --

MR. SCHECTMAN: It won't.

A To the best of my knowledge, there was discussion revolving around some title to Urban Development in the upper west side. The university did go with building the buildings at the main center so the other schools could benefit therefrom.

MR. KRAMER: I would hope that that will set to rest this smoke screen issue.

Q I would now like to turn your attention to the area of the principal investigator. You indicated in your direct testimony that the university issues checks for the salaries and likewise pays for the fring benefi s of those persons employed under a grant.

A That's correct.

Q Where are the funds derived from that pays those people --

A In the individual, or employee, is directly funded through a grant project and allocated through that project, the ultimate source, the Federal Government is the sponsoring agency.

Q Is it correct that in most cases the salaries and monies are provided by the -- if a person is employed solely to work on a grant, has no other responsibilities in the university his entire compensation provided for by grant funds -

A Ultimately, yes.

Q And his compensation would include both his direct salary and fringe benefits, would it not?

A Correct.

Q And will grant funds pay a portion of the faculty member's salary who is working on a funded grant?

A A grant will absorb the cost of a faculty member to the degree that that faculty member is furthering the research of that project, yes.

Q How is that distinction made relative to whether he is acting in another role with the university --

A It's basically made by the principal investigator who inserts the time that the individual member has performed work for the project.

Q What allocation will he make? Will it be a percentage of his time --

A It varies somewhat from federal agency to federal agency, but the Federal Government will accept any number of reasonable hours --

Q Will this same kind of allotment of time be taken into consideration for the definition of the faculty member's work load?

A I don't follow the question.

Q For graduate school faculty that we have heard on the testimony of Dr. Fishman that there is a definition of full time faculty status according to the time that might be spent teaching or time that might be spent with grants, is there normally a correlation between the percentage of time, a faculty member spends in furtherance of the grant and the credit he receives toward the definition of full time status?

A There should be. I believe there to be.

Q Do you know how many faculty members or approximately how many faculty members have grants which stand for more than 50 per cent of their allotted time?

A No, I wouldn't even want to guess and I should also point out that many faculty members have two and three and four grants in addition to the other responsibilities. It would be vary hard to guess.

Q Is it not true that some grants will require special equipment?

A Certainly.

Q And the university will issue a check for the payment --

checks for the payment for the purchase of such equipment?

A The university is the one held responsible for ultimate responsibility of the project. Certainly in the hiring of personnel or the purchase of equipment that is done.

Q And the equipment that is necessary for a grant, I assume that usually will be designated in the grant application?

A If it is a relatively large piece of equipment, the granting agency will probably require that it be specified.

Q And the grant funds, if that equipment were deemed necessary, would allow for its purchase?

A It could allow for its purchase.

Q Now, you testified also that the terms of employment of personnel used solely for a grant are governed by university policy, did you not?

A Yes.

Q And is that not a requirement in fact, of most of the granting agencies?

A Certainly.

Q That all personnel hired under a grant must be employed pursuant to the personnel policies of the university?

A That is correct.

Q And is it not true that the university would be primarily responsible for setting the terms of employment including salary for all those employed under a grant?

A Only within broad perimeters.

Q Is it not true that there are suggested to principal investigators very specific annual increases in salaries allowable?

A To answer your question, you would have to either break it down into categories of employees, because it may vary.

Q Are you familiar with the grant that Professor Goldstein at the Ferkauf Graduate School --

A Mr. Goldstein has a rather large contract, not a grant.

Q Pursuant to the contract, are not the terms and conditions of the personnel employed thereunder required to be pursuant to university policy?

A They must be consistent with it.

Q In the past year, did Professor Goldstein submit to you any requests for the salaries of the personnel employed under him with reference to the grant?

A Yes, I believe he did.

Q Did you not deny some of those requests?

A Some were denied, some were modified, some were approved.

Q Did you not state to Professor Goldstein that those were not approved, modified in accordance with perimeters that the university set for increases --

A Yes, and at that time, there was also compliance on the Federal Wage Stabilization Act, which everybody was bound by.

Q You are an attorney, are you not?

A Not a practicing attorney.

Q Are you a member of the Bar?

A No.

Q You were familiar with the wage guidelines of the Economic Stabilization Act?

A Yes.

Q And you were familiar that there were numerous grounds for exception?

A There were grounds for exceptions, yes.

Q When did he make this request for salary increases, what year?

A You're trying to relate a series of requests as if they were one request at one time. I have now on my desk a request from Dr. Goldstein.

Q Has it occurred in the past that other faculty members submitted requests which you have likewise modified or rescinded or turned down because they were not in accordance with certain perimeters?

A Certainly, that's the function of central administration.

Q However, is it not true that the principal investigator will hire -- will do the hiring of personnel who work solely on his or her grant?

A In essence, yes.

Q Is it not true that to the extent each such person takes part in the furtherance of the grant, that person is directly responsible to the principal investigator?

A The principal investigator is the supervisor.

Q Who --

MR. KRAMER: Mr. Hearing Officer, I would ask counsel for petitioner to stipulate that principal investigators are supervisors within the meaning of Section 211 of the National Labor Relations Act. These are not my questions eliciting this information, but his own.

MR. SCHECTMAN: We're just establishing a record now. We're not stipulating. We'll proceed.

MR. KRAMER: Mr. Hearing Officer, I don't really understand and I would state for the record --

MR. SCHECTMAN: Mr. Hearing Officer --

MR. KRAMER: Mr. Schectman, I haven't objected much today and I would like to make this statement for the record.

I fail to understand the type of proceeding in which it becomes perfectly clear on counsel's own questions in areas, quite frankly, that are in issue in the case, that averaging figure represents some payment toward a pension fund although that employee may not be a member of that fund?

A That is a distortion of what I said.

Q What did you say?

A It's a rate determined upon the basis of certain experience with regard to expenditures made for certain fringe benefit and the composite rate is determined by HEW auditors. This is not only acceptable to HEW, but it's preferable with respect to the accounting aspect also.

Q Do some principal investigators have secretaries employed under the grant?

A Yes.

Q And will those secretaries be union members?

A Conceivably.

Q Do any principal investigators take a principal part in collective bargaining with the union?

A I would say yes. Members of the faculty have served on the university negotiating committee. Whether all of them have always been, I can't say, but we have a cross section representation so no doubt over the years, principal investigators were, yes.

Q I ask you if you had any specific knowledge of any grant in which one faculty member does not in theory, does not nominally, but does in fact, as an actuality supervise another faculty member and I mean by that -- go ahead and answer the question.

MR. KRAMER: I think the addition that you were adding is relevant. It calls for a conclusion of the witness. You're using a statutory term. If the witness said "Yes" we would be bound by his answer. We need a definition of the term before the witness answers. He's not a practicing lawyer and he's not a practicing labor lawyer.

Q I say supervise in terms of direct or control the activities of another faculty member relative to that grant.

A I can't cite a specific faculty grant at the present time, but I would say they do.

MR. KRAMER: Of his own personal knowledge.

MR. SCHECTMAN: No further questions.

REDIRECT EXAMINATION

Q (By Mr. Kramer) You say faculty members have secretaries?

A Yes.

Q Who directs them?

A The principal investigator.

Q Who has the authority to select the secretary in the first instance?

A   If a new hire is to be made, it's the principal investigator.

Q   That is so whether they are union or non union?

A   Yes.

Q   If a secretary comes in drunk, does the principal investigator have the right to reprimand that secretary?

A   Yes.

Q   Whether she's union or non union?

A   Yes.

Q   Who would she go to if she has a complaint?

A   To the principal investigator.

Q   And that is so whether it's union or non union?

A   Yes.

Q   There is no didactic value, is there, in the supervision of secretaries?

A   No.

Q   You testified that other faculty members, I think this was on your cross examination, have secretaries; is that correct?

A   Yes.

Q   Do they have the authority to direct the secretaries at the time they are using them?

A   They certainly do.

Q   Tell them what to do?

A   And tell them when to do it and how to do it.

Q And dress them down if they don't do it properly?

A I would hope they don't have to, but they would if they had to.

Q I would assume if a secretary came in drunk, there would be the right to recommend termination?

A Yes.

Q Is it correct to state that the grants of the university are managed?

A Yes.

Q And they are grants to the university; right?

A Yes.

Q They are not grants to any particular faculty member?

A That's correct.

Q Who manages the grants? Who has the managerial function?

A The principal investigator.

Q You don't, do you?

A Not on a day to day operational basis.

Q Dr. Fishman doesn't?

A No.

Q The deans don't, do they?

A No.

Q Can you give us a feel for the amount of money that has been granted to the university each year for research purposes by these various agencies?

A I think we're talking about anywhere from -- it varies, but I think we can say two and a half to three and a half million dollars per year, excluding the medical shcool, that would be a reasonable figure.

Q Would it be a correct statement to say that that money is managed by the principal investigators?

A Certainly.

Q You have told us about registrars' offices at various schools. Is there a registrar's office at Belfer?

A No, sir.

Q Dr. Socol, you were here previously when Mr. Schectman made his request for some AAUP reports, were you not?

A Yes.

MR. KRAMER: Mark this as 82 A and B.

(Whereupon the documents referred to were marked Employer's Exhibit Nos. 82 A and B for identification.)

Q I show you Employer's Exhibit 82A marked for identification under the logo of AAUP, a document entitled "Annual Survey of Academic Salary and Fringe Benefits Data for the Year 1973-74" and written in the upper right-hand corner, "Undergraduate School's file copy."

Is this a copy of one of the completed questionnaires that was submitted to AAUP for the 1973-74 school year?

A Yes, I recognize the handwriting as being that of

Q But it -- it wouldn't be possible?

A No.

Q You were asked a number of questions by learned counsel concerning Professor Goldstein, recommendations he had made for salary increases for personnel working on his contract or as I would call it, his grant. Do you recall that?

A Yes.

Q You testified, as I recall, that some you accepted and some you modified and some you rejected.

A Correct.

Q Is it a fact, and if it isn't, please tell me, that the majority of Professor Goldstein's recommendations were accepted, if you can recall?

A I would say the majority either were accepted exactly as submitted, or modified as opposed to the number submitted.

Q You testified that people such as Professor Goldstein had the authority to establish salaries of people on their grants within broad perimeters. What did you mean by that?

A For some levels of employees, such as secretaries and clericals, where it's more clearly defined or the type of work is more easily or readily able to be defined, we have minimum salaries and annual amounts of increases such as working conditions and fringe benefits. When we go into research associates whose institutional standard of measurement is so difficult, the latitude that is available is considerable.

Q There is no personnel department to look into that program, is there?

A No.

Q Is the dean involved in that?

A Not directly, no.

Q The principal investigator must make those judgments?

A To a great degree.

Q Are these judgments generally accepted?

A Unless they are quite unusual or quite irregular, by and large -- in the areas of lab work, or things of that nature, the principal investigator's discretion is followed.

MR. KRAMER: No further questions of this witness.

MR. SCHECTMAN: I have just one or two.

RECROSS EXAMINATION

Q (By Mr. Schectman) Dr. Socol, money that the university receives for a grant, is it not true that the obligation of the university is to utilize those funds solely for the purposes of furtherance of the grant?

A Certainly the answer to the question is yes, but I think you are misstating or have the wrong impression as

Reporter.

THE WITNESS: Martin Miller, 24 Woodmill Road, Chappaqua, New York.

DIRECT EXAMINATION

BY MR. SCHECTMAN:

Q Do you hold a position with the Faculty Association of the Ferkauf Graduate School?

A Yes.

Q What is that position?

A I am president.

MR. SCHECTMAN: I offer to be marked for identification as Petitioner's Exhibit 11 the constitution and bylaws of the Faculty Association of the Ferkauf Graduate School of Humanities and Social Sciences.

(Whereupon, the document above referred to was marked as Petitioner's Exhibit 11 for identification.)

Q Professor Miller, are employees permitted to participate in the Faculty Association at Ferkauf?

A Yes.

Q I show you Petitioner's Exhibit 11 marked for identification. Is this the effective constitution and bylaws of the Faculty Association, the Ferkauf Graduate School of Humanities and Social Sciences?

A Yes, I believe it is.

Q Has it been adopted by its membership?

don't do that much screening. Relative to the guidelines that are stipulated by our department and the standards committee of the faculty, as well as the dean of course.

Q And that admissions office is located where?

A On the 16th floor at 55 Fifth Avenue.

Q And is it that admissions office that receives the applications for admission to Ferkauf?

A Yes.

Q Does the final decision as to admissions rest in the process you described in your prior testimony?

MR. KRAMER: Can I have that question read back before the witness answers it?

THE HEARING OFFICER: Repeat the question.

(Question read.)

MR. KRAMER: If the witness understands the question, I have no objection.

A As I understand the question, the final disposition of an application would depend on the recommendation of the department to which the person has applied. In that respect, the final decision is essentially in the hands of the department.

The formal processing will be expedited by the admissions officer.

Q Are you familiar with the role that the faculty members of the Ferkauf Graduate School play in the hiring of other academic personnel, I mean faculty, at Ferkauf?

A Yes.

Q Can you describe that role?

A The role will be--typically the initiation of a request for a new faculty person will come from the department concerned.

I think probably always the potential candidacy of certain persons for faculty appointments will be drawn, the names of persons, will be typically drawn from the department.

Initial inquiry will be conducted by the department. The applications or the type of potential faculty will be reviewed by faculty of the department, as well as, of course, the dean.

And given that first hurdle is past, then the potential faculty member will be called in for meetings, for interviews by the department and also will meet the dean and other administrators in the University sometimes.

That is, the candidate will typically meet the dean, and, I assume, occasionally, meet other members of the Association.

MR. KRAMER: I think the record will speak for itself as to what the witness means.

Q Are you familiar with the role of the faculty in matters of faculty promotion at the Ferkauf Graduate School?

A Yes.

Q Will you describe that role?

A Yes, there is a standing committee of the Ferkauf faculty government that has established guidelines. That committee meets regularly, I believe,with the dean sitting as its ex officio on the committee.

The guidelines are rather specific with respect to what the criteria ought to be for promotion.

The department, a given department, through its chair person will ordinarily make a recommendation for consideration of a person for promotion. And that will then be reviewed by the standing committee on promotions and the dean for voting and subsequent recommendation.

MR. SCHECTMAN: I offer to be marked for identification as Petitioner's Exhibit 12A and 12B a document entitled under the caption Ferkauf Graduate School of Humanities and Social Sciences, and beneath that Yeshiva University, and beneath that criteria and procedures for promotion, a four-page document to be marked as Petitioner's Exhibit 12A.

(Whereupon, the document above referred to was marked as Petitioner's Exhibit 12A for identification.)

MR. SCHECTMAN: As 12B, a two-page document entitled guidelines for promotion with the name J.D. Gittler to the right.

(Whereupon, the document above referred to was marked

12B are received in evidence.

(Whereupon, Petitioner's Exhibits 12A and 12B were received in evidence.)

Q Professor Miller, are you familiar with the faculty's role in matters of tenure of faculty at the Ferkauf Graduate School?

A Yes.

Q Could you describe that role to us?

A It is rather similar to the promotions procedures in the sense that there are solicitations to departments for recommendations for prospective tenure from the dean.

The dean, Dean Gittler has, at least in the past, had a special committee or council, I don't really recall the formal title, but I served on that committee during one year, I think I neglected to mention that earlier, which discussed procedures and makes recommendations on review process, and subsequently after review of a great variety of materials all tenured faculty at the school votes on the admission of someone to tenure.

Q When you say on the admission of someone to tenure, would that someone be--

MR. SCHECTMAN: Strike that.

Q Tell us what you mean by someone.

A A member of the Ferkauf faculty who has been recommended for tenure.

Q Do you have any knowledge of whether any such recommendations have not been approved?

A To the best of my knowledge, recommendations from Ferkauf for final approval have not been denied.

Q Now, is there then a formal committee to deal with the matter of tenure?

A Is there a formal committee?

Q Yes.

A The committee, I believe, was at the dean's pleasure and was constituted by him. I don't believe there is a formal committee in the faculty government.

However, the faculty welfare committee does have in its pervue the matter of reviewing policy with respect to tenure.

Q Now, is there a formal standing committee that deals with matters of promotion?

A There is a formal standing committee to that effect.

Q What other formal standing committees are operative at Ferkauf?

A There is a considerable number. There is the steering committee, which is a kind of administrative committee on committees, I suppose one might say.

There is a library committee which is properly concerned with matters of the library.

There is a research committee which in the past had a budget and was able to provide seeding money for new projects.

There is a curriculum committee which is concerned with the review of all faculty, all academic programming at Ferkauf.

The standards committee which is conerned with academic standards, admissions policies, requirements for degress and the like. And also serves as a kind of review panel for students, and I believe in the bylaws it is not only students, but also faculty and administration of the school with respect to academic questions.

Q Now,--

A I think that about exhausts it.

Q With particular respect to the curriculum committee, you testified that is concerned with the academic program at the Ferkauf Graduate program.

A Yes.

Q Is it concerned with the academic programs at any other parts of the University?

A No.

Q What action is required before a new academic program is accepted and put into effect?

A The committee reviews the input of various departments. Then makes its recommendation to the whole faculty sitting as a committee of the whole, I guess, in the faculty government meetings.

Then that whole faculty must approve a program change.

Q When you say whole faculty, what do you mean?

A I mean all those members of the faculty who are voting, full and voting members of the faculty government, Ferkauf Graduate School.

Q And solely at the Ferkauf Graduate School?

A Yes.

THE HEARING OFFICER: We will adjourn now and return at 1:30.

(Whereupon, at 12:30 p.m., the parties adjourned for lunch.)

library is that committee concerned?

A It is concerned with the Graduate Center Library, but it is concerned on behalf of the Ferkauf Graduate School, faculty and student body.

Q Now, are you generally familiar with the membership of the standing committees at the Ferkauf Graduate School during the last academic year?

A Yes.

Q And are you aware of any member of any of those committees who had other than a single base appointment to the Ferkauf Graduate School?

A No.

Q Have you, in fact, reviewed a list of the members of each of those committees?

A Yes.

Q And who supplied that list?

A I believe the dean's office.

Q Is the welfare committee at the Ferkauf Graduate School a standing committee?

A Yes.

Q And briefly, what are its responsibilities and role?

A Its primary responsibilities are to deal with respect to matters of faculty welfare such as questions of salary and working factors, conditions such as tenure policy, sabbatical leave, policy of leave of absence. Matters of that nature.

Q What has been your role on the welfare committee?

A For the last two years, I have been chair person of that committee.

Q Are you aware of the salary schedule for the Ferkauf faculty?

A Yes.

Q Is that salary schedule applicable to the faculty of any other schools of the University?

A No.

Q Do you know who took part in the formulation of that salary scale?

A The faculty welfare committee together with the dean, and I am not certain, but the then vice president for financial affairs, I believe, was also involved, Mr. Levine.

Q Did the welfare committee on behalf of the faculty at Ferkauf undertake to review salaries and other working conditions at the Ferkauf Graduate School for the academic year of 1973-1974?

A Yes.

Q When did that effort commence?

A It began in the early part of 1973, I think sometime in February at a faculty welfare committee meeting.

MR. SCHECTMAN: I offer to be marked for identification as Petitioner's Exhibit 13, the minutes of the meeting

P R O C E E D I N G S

HEARING OFFICER BANKS: The hearing will be in order.

This is a resumption, the last session having been on August 14, 1974.

The appearances of the parties are the same as at the last session.

I believe at the last session we had a witness on the stand; is that correct?

MR. SCHECTMAN: That is correct.

HEARING OFFICER: We are continuing with that witness at this time.

Whereupon,

MARTIN B. MILLER,

the witness on the stand at the time of recess, being previously sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Cont'd)

Q (By Mr. Schectman) I would like to continue, Mr. Miller, Professor Miller, with particular respect to a clarification of the constitution and bylaws of the Faculty Association of the Ferkauf Graduate School.

Did the Faculty Association School meet on September 11, 1974?

A Yes.

Now if the reader of the record, the Regional Director and/or the Board, feels that there is information in there that is pertinent to a decision on the issue, I am sure that the reader of the record, The Regional Director or the Board, would be able to draw from that whatever inferences were necessary to make those decisions.

I will sustain an objection to that line of questioning.

MR. SCHECTMAN: Note our exception.

HEARING OFFICER: Right.

Q (By Mr. Schectman) Professor Miller, how are department chairmen chosen at the Ferkauf Graduate School?

A They are elected by the rexpective departments.

Q Are you a department chairman?

A Yes, I am.

Q Of what department?

A Department of Special Education.

Q That department is?

A That department is--

Q Where is that department?

A At Ferkauf Graduate School.

Q When did you become a department chairman?

A Just this semester.

Q When were you elected?

A It was a year ago last May, in preparation for this semester.

MR. SCHECTMAN: Off the record for a moment.

HEARING OFFICER: Off the record.

(Discussion off the record.)

HEARING OFFICER: On the record.

Q (By Mr. Schectman) Are you familiar with the role and responsibilities of department chairmen?

A Yes, I am.

Q What is their primary role?

A Primarily department chairmen, or chairpersons, are conduits between the dean and the membership of the department that they chair.

They have administrative functions were in the department, with respect--given the advice and consent of the faculty that they lead.

HEARING OFFICER: Off the record.

(Discussion off the record.)

HEARING OFFICER: On the record.

Q (By Mr. Schectman) Do departmental chairmen have secretaries?

A No. Departments have secretaries or in our case an administrative assistant and a typist.

Q Are that person's services then shared by the department?

A Yes.

Q Do you hire or fire the administrative assistants or secretary-typists?

A No. As a matter of fact--

MR. KRAMER: I would ask that the Hearing Officer instructs the witness to be responsive to the questions.

No is no, I would assume in this case. Having said no, he has been responsive. We had this problem last hearing.

MR. SCHECTMAN: I think the witness can clarify an answer.

HEARING OFFICER: If there is a clarification. The witness can give an answer. If that answer requires an explanation, you know, the answer itself, then he may give an explanation.

But an answer that can be answered by a yes or no and completed, completely answered, then of course that would be the end of it.

MR. KRAMER: The witness was not asked who does the hiring and firing, just whether he did, and he said no.

Q When you assumed your chairmanship this fall, were any new staff hired?

A No new faculty were hired, and no new clerical persons were hired.

Q Who is the administrative assistant working for the department now?

A Her name is Mrs. Beatrice Schwartz.

Q Was Mrs. Schwartz working for the department last year?

A Oh,yes, quite a few years.

Q What is the role of the department chairman in appointment of faculty?

A It is essentially an advisory role. Again, the department chairman speaks for the faculty of the department, in an advisory sense to the administration with respect to hiring.

Q What is the role of the department chairman with respect to the promotion of faculty?

A It is similarly advisory. The chairman will sound out the sentiments of other members of the faculty with respect to a recommendation from the department on a promotion.

Q And what is the role of the department chairman in the matter of tenure?

A It is analogous to the problem of promotion.

Q Does a department chairman recommend salary increases?

A No. We have a salary scale, as I have heard testimony to here, and so there are no--there is no such role for the department chairman.

Q In the course of your employment at Yeshiva University, have you been a principal investigator with respect to any grants?

A Yes, I have.

Q Over what period of time have you been a principal investigator?

A Well, I would have to say a majority of my tenure at Yeshiva has been involved--I have been involved as principal investigator for one or two grants. About eight of the ten years I have been there, I suppose.

Q So then are you not familiar with the--strike that.

Can you describe to us the process by which you formulate a grant proposal?

A Yes. Essentially--

Q Let me just add, I am referring now to particularly in your capacity as a principal investigator.

A Yes. That will involve a good deal of consideration as to how to prepare a meaningful research design, a viable budget that would be in line with the expectations of the funding agency.

It would require library research, and a proposal, grant proposal, mostly in terms of the budget and its correspondence to the university policy. It is a minimal role.

MR. KRAMER: Mr. Hearing Officer, I ask that the conclusion of the witness be stricken, and what be left are the facts.

MR. SCHECTMAN: I object. The witness has experience here, he has testified as to his role, and he has testified as to the university's role, and to limit his testimony is just undue and uncalled for, and counsel for the university can cross-examine this witness, and investigate and look into the comparison that the witness so states.

MR. KRAMER: We are dealing with facts here, not conclusions, I don't think this record lives or died on whether this objection is sustained or not, but this is the type of thing we have had all through the testimony.

MR. SCHECTMAN: All through the testimony of the university people.

MR. KRAMER: Counsel has a right to object when I have a witness on the stand, and I have a right to object when he has a witness on the stand.

HEARING OFFICER: Will you read the question and answer back, please?

(Record read.)

Q Are you familiar with any grants where one principal investigator is so listed or indicated on the grant, and that principal investigator works in collaboration with another faculty member.?

A Yes.

Q What ractors would distinguish that kind of a grant or listing of a single principal investigator, from a grant where there are co-principal investigators?

A It could be at least two situations, I can imagine. One is--

MR. KRAMER: Is he imagining or are these facts?

THE WITNESS: That I can deny. There are--there is the situation where an agency will stipulate that only one person be represented as a principal investigator, even though the envisioned research is truly collaborative. That is one instance where a--what might ordinarily be a co-principal investigatorship would be arbitrarily decuded among the coequal investigators, so that one takes on the role as principal investigator for--in a nominal sense.

The other circumstance would be where there is indeed a principal investigatorwho has collaboration with someone else who is not co-equal.

Q Generally , what form would, in the latter circumstances would that collaboration take?

MR. KRAMER: I must object, at this point, because there is no showing in this particular situation, this witness has personal knowledge of this type of situation, and if he has personal knowledge, how many situations like this he has personal knowledge of.

When they occurred. They may have occurred ten years ago, two years ago. There may be one of them, two of them, six of them.

Obviously this type of testimony at this point is not based on any type of valid evidentiary foundation.

HEARING OFFICER: Are you contemplating rephrasing the question?

MR. SCHECTMAN: Yes.

HEARING OFFICER: All right.

Q (By Mr. Schectman) Did you, in fact, work with Professor Goldstein under a grant on which he was listed as the principal investigator?

A Yes, I did.

Q When did you do so?

A I did so for--during my period of leave, as a matter of fact, to some extent, and then subsequently from 1972 to the beginning of 1974.

Q What was the nature of your relationship with Professor

Goldstein and his grant?

A Yes, now--

MR. KRAMER: If this is a conclusory question, I must object to it. If it is a question in which the witness is going to say what he did, and how he did it, and what his factual day-to-day relationship was, that is quite another matter.

If it is going to be conclusory--it looks like it is calling for a conclusion of the witness. I don't think the record should be burdened with a conclusion.

MR. SCHECTMAN: I will ask Professor Miller to answer the question in terms of the specifics of his relationship and what he undertook to do in connection with the grant.

MR. KRAMER: I gather he was not a PI on this particular grant, is that a fac6?

MR. SCHECTMAN: I don't know.

MR. KRAMER: I object because a foundation has not been laid as to his status on the grant.

MR. SCHECTMAN: This is exactly the question.

MR. KRAMER: This is not the question. If he is the principal investigator, it is yes, and if it is--and if he is not, it is no.

MR. SHECTMAN: I have asked the witness

a question with respect to his relationship to Professor Goldstein and his grant. The witness has testified when he worked with this grand, and now it has been asked--he has been asked to give specifics as to the nature of that relationship, what was done, what was involved.

MR. KRAMER: If that is the specific question, I have no objection.

MR. SCHECTMAN: It was already made prefectly clear that this was a specific question.

HEARING OFFICER: All right.

THE WITNESS: All right.

I conducted research on expression and recognition of emotion in children, under the auspices of Dr. Goldstein's research and development grant from the United States Office of Education.

Twenty-five percent of my time was allocated accordingly.

Q What work did you do on connection with the grant?

A Designed a number of experiments and conducted those experiments, collected data in their regard, and analyzed those data, drew conclusions accordingly, and submitted my conclusions to Dr. Goldstein.

Q With respect to your research grants, were there other persons employed under that grant, specifically?

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BEFORE THE NATIONAL LABOR RELATIONS BOARD

2nd Region

In the Matter of:

YESHIVA UNIVERSITY,

Employer,

and

YESHIVA UNIVERSITY FACULTY ASSOCIATION,

Petitioner.

Case Nol
2-RC-16662

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26 Federal Plaza,
New York, New York
Tues. November 26, 1974

The above-entitled matter came on for further hearing, pursuant to notice and adjournment, at 10:00 a.m.

BEFORE:

CLIFFORD P. CHAIET, Hearing Officer.

APPEARANCES:

SAUL G. KRAMER, ESQ.,	Of Counse, Proskauer, Rose, Goetz & Mendelsohn, appearing on behalf of Employer
GERALD A. BODNER, ESQ.,	Labor Counsel, Yeshiva University, 1300 Morris Park Ave., Bronx, N.Y.
RONALD SHECTMAN:ESQ.	Of Counsel, Murray A. Gordon, Esq., 666 Third Ave., New York, N. Y., appearing on behalf of Petitioner.

CSA Reporting

HEARING OFFICER: Let us go back on the record.

I am going to deny Mr. Shectman's motion, grant Mr. Kramer's motion, and for convenience sake the exhibit--the transcript will be marked as Board Exhibits 2-A through I, "A" being the first volume, the first day of hearing; "B" being the second day of hearing, through until "I", which is the last day of hearing.

Will you please mark these for identification as 2A through 2-I?

(Thereupon, Board Exhibits 2A through 2-I marked for identification, as of this date.)

HEARING OFFICER: Is there any objection to the receipt of the transcript and the exhibits attached into evidence?

Mr. Kramer?

MR. KRAMER: I have no objection, Mr. Hearing Officer.

HEARING OFFICER: Mr. Shectman?

MR. SHECTMAN: I renew my objection, Mr. Hearing Officer.

HEARING OFFICER: Your objection is

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AFTER RECESS

1:30 o'clock p.m.

HEARING OFFICER: Let us go back on the record, gentlemen.

The hearing is now in order.

MR. KRAMER: Dean Mirsky, please.

HEARING OFFICER: Okay.

Raise your right hand, please, Mr. Mirsky.

(Mr. Mirsky complies.)

HEARING OFFICER: Do you swear the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth , so help you God?

MR. MIRSKY: Yes.

HEARING OFFICER: All right.

Whereupon,

DAVID MIRSKY

being first duly sworn by the Hearing Officer, was examined and testified as follows:

HEARING OFFICER: Please give the reporter your name.

THE WITNESS: My name is David Mirsky, M-i-r-s-k-y.

DIRECT EXAMINATION

Q (By Me. Kramer) Dean Mirsky, by whom are you employed?

A By Yeshiva University.

MR. KRAMER: Can we go off the record for a minute?

HEARING OFFICER: Yes.

Off the record.

(Discussinn off the record.)

HEARING OFFICER: Back on the record.

Q (By Mr. Kramer) In what capacity?

A I am the Dean of Stern College for Women.

Q How long have you been dean of Stern College for Women?

A Since September of 1968

Q And how long have you been employed by the University, Dean?

A Sincc 1948.

Q Are you a member of the faculty?

A Yes, I am.

Q And what title do you hold?

A Professor of English.

Q Where is your base appointment?

A At the moment it is at Stern College for Women, sir.

Q Dean, have you actually taught at Yeshiva University?

A Yes, I have.

Q Would you tell us about that, please?

A I taught at what is now called the Erna Michael College for Hebrauc Studies.

At the time that I taught there it was called the Teachers' Institute for Men. I taught at Yeshiva College. I taught at Stern College. And I taught at Ferkauf Graduate School.

Q When was the last time that you taught, as best as you can recall?

A I taught last fall as a result of an unfortunate incident , the demise of a faculty member and previously I taught regular courses , about two--two and a half years ago.

Q What did you teach last fall?

A I taught a course in Milton and The 17th Century.

Q Where did you teach that?

A Stern College for Women.

Q Where did you teach two and a half years ago, Dean?

A At Stern College for Women.

Q What did you teach?

A I taught a history of the Novel and Seminar and Joyce.

MR. KRAMER: If there are typographical errors, we would like you to correct them.

THE WITNESS: One caught my eye.

On page 2, against the name of Professor Paul Cahn, it says that he is adjunct professor at Pace University and the New School.

It should be "SOC" period, abbreviation for social not for "son." "SOC" period.

And in the second column, next to the name of Professor Lewis Lister, the abbreviation VIS has been rendered as "VIC."

That should be changed to "VIS.":

I don't know that I see any others at the moment.

Q Would you make those changes on the official exhibit, please?

A Yes.

(Witness complies with instruction of counsel.)

That is about all I can spot at this moment on a quick review.

Q Now, Dean Mirsky, what are your responsibilities as the Dean of Stern College for Women?

A I am to serve as the educatinal leader of the college and report to the president through the vice president for academic affairs on how the college is conducting itself.

Q You say as to how the college is conducting itself.

Is there in fact a faculty organization at Stern College for Women?

A Yes. The faculty is organized as a faculty.

Q And is there a thing called the faculty organization or a body called the faculy organization?

A Yes.

MR. KRAMER: Here is 102; mark that, please.

(Thereupon, Employer's Exhibit 102 was marked for identification.)

(Thereupon, Employer's Exhibit 101 previously marked for identification, received in evidence.)

MR. KRAMER: I now offer Employer's Exhibit 101 in evidence.

HEARING OFFICER: Any objection, Mr. Shectman?

MR. SHECTMAN: No objection.

HEARING OFFICER: Received.

HEARING OFFICER: Any objection, Mr. Shectman?

MR. SHECTMAN: No objection.

HEARING OFFICER: Received.

(Thereupon, Employer's Exhibit 102 previously marked for identification, received in evidence.)

Q (By Mr. Kramer) I have here Dean Mirsky, a document entitled, "Stern College for Women, Yeshiva University, Faculty Organization Interim Document I."

Are you familiar with that document, Dean?

A Yes, I am.

Q And it is marked as Employer's Exhibit 102, for identification, is it not?

A Yes, it is.

Q To your knowledge, Dean Mirsky, was this document approved by the faculty of your school?

A Yes, it was.

Q And has this document been distributed to the faculty of your school?

A Yes.

Q Dean Mirsky, are faculty meetings in fact held at Stern College for Women?

A Yes, in accordance with the requirements of the document.

Q Approximately how many times each academic year do these meetings take place?

A We meet a minimum of four times each academic year, two in each semester and then as business requires or at the request of faculty we can have additional meetings--either additional regular meetings or additional special meetings.

MR. SHECTMAN: Can we have a clarification here in reference to the faculty since we are talking about full-time and part-time?

MR. KRAMER: I am going to get that right in my next set of questions, Mr. Shectman.

I am glad you raised that point.

Q (By Mr. Kramer) Now, Dean Mirsky, referring to this document and more particularly to item 4(b) on page 1 of this document, are all members of the faculty in fact invited to faculty meetings, and are they in fact permitted to participate freely in deliberations, Dean ?

A Yes, they are.

Q And is that so whether they are full-time faculty members or part-time faculty members?

A Yes; that is so.

Q And in your experience, Dean Mirsky, do part-time faculty members actually participate in these meetings?

A Yes.

Q And you have seen them do so?

A Yes.

Q Now, let us turn to item 4(c).

A Yes.

Q Is it a fact, Dean Mirsky, that part-time faculty members who have been at the college three or more consecutive years and who teach three or more hours are entitled to vote in faculty meetings?

A Yes, they are.

Q And they are entitled to participate regardless of their amount of service; is that correct?

A Yes.

Q Now, let us turn to Roman Numeral 2 of this document--on page 1 only.

Were items 1 and 2 under Roman Numberal II made effective by the faculty?

A Yes.

Q All right.

Now, let us turn to page 2 of this exhibit, more particularly to items 2, 3 and 4 under the heading Roman Numberal II?

Under the heading III--strike that.

Were they established at the time that Employer's Exhibit 100--102 was promulgated or subsequent thereto?

A No, at subsequent meetings of the faculty each of these committees was acted upon and approved either as so stated or as revised.

Q Has a document been published listing the committees and when they were approved?

A Yes, there is such a document.

Q Let us now turn to page 3, under the heading III, "Committees."

Was a committee on promotions in fact established pursuant to Employer's Exhibit 102?

A Yes.

Q And it is in existence today?

A Yes. It functions at the college regularly.

MR. KRAMER: Please mark this Employer's Exhibit 103 for identification.

(Thereupon, Employer's Exhibit 103 was marked for identification, as of this date.)

Q (By Mr. Kramer) I show you-Dean Mirsky-a document entitled "Stern College for Women/Yeshiva University, Further Faculty Action on Faculty Oeganization - Interim Document 1."

Are you familiar with this document, Dean?

A Yes, I am.

Q Has it actually been distributed at Stern College for Women?

A I don't know whether it was distributed to each faculty member precisely in this form.

This is a compilation of action taken by the faculty at committee meetings and culled from the minutes of the meetings at which these actions were taken.

Those minutes were distributed to each faculty member.

Q Where did you get this document from?

A I--

Q From your file or from someone else's file?

A From the official file of the minutes of faculty meetings.

Q All right.

Turning now to the--both pages of these documents, Dean Mirsky, were the eight committeees referred to on --on both pages of these documents actlly established?

A Yes, they were.

Q Have they actually met?

A Yes. And they are still functioning with the exception of one committee.

Tell us about that.

That is the committee which is Arabic No. 3, Faculty Students Committee on Student Life, that functioned for a period of years and then by faculty action was replaced by the--another committee which ultimately developed a constitution for a faculty student center at Stern College, and that is reflected on page 3 under Roman Numeral IV, and that Roman Numeral IV has replaced the old faculty student committee on Student Life.

Otherwise all other committees are functioning.

HEARING OFFICER: Page 3, Roman IV.

THE WITNESS: It says "Stern College Center."

HEARING OFFICER: Oh, that is page 2.

MR. KRAMER: It is page 3. I see the number.

Q (By Mr. Kramer) Dean Mirsky, I note that the second page of this exhibit is denominated page 3; is that incorrect?

A Well, then on this document would be page 2.

Q Would you please correct the document to read page 2, Dean?

A Yes.

(Witness complies to instructinn of counsel.)

MR. KRAMER: References, Mr. Hearing Officer, to page 3 previously made are in fact to page 2.

Q You have made reference, Dean Mirsky, to the Stern College Faculty Student Center, have you not?

A Yes, I have.

Q And does that center have a constitution?

A Yes, it does.

MR. KRAMER: Please mark that Employer's 104 for identification.

(Handing to reporter.)

(Thereupon, Employer's Exhibit 104 for identification, as of this date.)

Q (By Mr. Kramer) I show you Employer's Exhibit 104 marked for identification, entitled"Stern College for Women, Yeshiva University Constitution of the Stern College Senate."

Is this the comtitution to which you have just referred?

A Yes, it is.

Q Isn't it a fact, Dean Mirsky, that Employer's Exhibit 102, 103 and 104 taken together represent the basic documents underlying the government--governance structure of the faculty at Stern College for Women?

A Yes, that is true.

MR. KRAMER: I offer Employer's Exhibit 102, 103 and 104 in evidence.

MR. SHECTMAN: At this time I ask for a brief boir dire on these documents in that there are certain irregularities that appear on their face.

For instance, Employer's Exhibit 103 on what is the first page it begins with Paragraph 2 with what is indicated to be something copied over, something omitted in Paragraph 3 which the counsel for the University--I'm sorry.

MR. KRAMER: I have no objection to him taking a voir dire on the authenticity of any document, as long as it is not cross examination, Mr. Hearing Officer.

HEARING OFFICER: Go ahead.

Q Then am I correct that Employer's Exhibit 102, that pages 2 and 3 were presented with page 1 to the faculty in the spring of 1967?

A Yes.

Q Was it necessary to retype or to redraft or reformulate the second two pages of this?

A Yes, it was. On the reproduction some of it is bad. We felt it would be better to retype it. Even page 1--it was reproduced off a Ditto sheet which doesn't reproduce too well.

Q I see.

Now just to understand what this document is in accord with its label, it is indicated that it is interim document 1.

Has it been superceded by any other document?

A No.

MR. SHECTMAN: I have no further questions.

Q (By Mr. Kramer) With respect, Dean Mirsky, to the committees listed in Employer's Exhibit 102, which is interim document No. 1, have those committees in fact been established?

A Yes, they have been.

Q And that is pursuant to actinn taken by the faculty as reflected in interim document--as reflected in the document entitled, "Further Faculty Action on Faculty Organization Interim Document 1," which is Employer's Exhibit 103.

Is that correct?

A Yes, that is correct.

Q So those committees exist, do they not?

A Yes, they exist at the college, with the one exception I mentioned, the committee on student life.

MR. KRAMER: I renew my offer of the documents.

MR. SHECTMAN: No objection.

HEARING OFFICER: Received.

(Thereupon, Employer's Exhibits 103 and 104 for identification, received in evidence.)

MR. KRAMER: Mark that Employer's Exhibit 105 for identification, please.

(Handing.)

(Thereupon, Employer's Exhibit 105 marked for identification, as of this date.)

Q (By Mr. Kramer) Dean Mirsky, I show you Employer's Exhibit marked 105 for identification, a document entitled, "Senate Unofficial List,"

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committee?

A Yes, they had a committee to study grade distribution; yes.

Q Did you have a committee on scheduling patterns?

A Yes. We had such a committee.

Q And on the academic calendar?

A Yes; we had such a committee.

Q And on emergency priorities and budget?

A No; we have a committee which is called the emergency personnel and budget committee.

Q I stand corrected.

A We have such a committee.

Q Would they be fairly called ad hoc committees or special problem committees?

A Yes, they are ad hoc committees established by the faculty.

Q Is there also a bicentennittee of the University,a Dean?

A Yes, there is--there are two bicentennial committees.

There is a university-wide bicentennial committee and then we have an ad hoc committee at the college, a Stern College Committee.

Q And are any part-time faculty members of that ad hoc committee at the college?

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A Yes, one--one member of the college committee is part-time, a Mr.--Professor Michael Hecht, H-e-c-h-t.

Q And he is listed on Employer's Exhibit 100, is he not?

A As a part-time faculty member; yes, sir.

Q Dean Mirsky, let us turn to the Committee on Academic Standards for a moment.

That is listed, is it not, on Employer's Exhibit 105?

A Yes, it is.

Q Does that committee actually meet?

A Yes.

Q About how often? How often last year, the last academic year?

A I'd say in the last academic year the committee probably met seven to eight times.

As of this current semester to my knowledge it has met some three times.

Q Now, this committee, could you tell us what it does?

A Yes.

Its function is to be concerned with the maintenance of proper academic standards at the college.

It concerns itself with such matters as review of cases of students whose academic performance has dropped below a minimum level and determines whether or not they should be placed on probation, whether they may be continued at the college or be asked to withdraw from the college.

They concern themselves with such matters as final examinations and course and any other such matters that may come up to them.

Q Would it be correct to say Dean Mirsky, that this committee decides whether a student is to say or leave in terms of his academic record?

A Yes, if a student record is not acceptable in the view of the committee, they will ask the student to withdraw from the school.

Q And this committee consists of you and six full-time faculty members appointed by you?

Is that right?

A Yes. And representatives of the office of the Registrary and the office of the student services.

Q These six full-time faculty members are appointed by you, are they not?

A Yes, they are.

Q Now, if a student is told to leave the university, the university would lose the income from that student, would it not?

A I presume the student would no longer pay tuition. Yes.

Q Dean Mirsky, have you ever o-erruled the determination of the Committee on Academic Standards with respect to the termination--I don't want to use the word "expulsion," but the termination of a student?

A No, I have not.

Q Now, let us turn to the Committee on Curriculum?

A Yes.

Q Does that committee consist of the department chairman and yourself?

A Yes. And a representative of the office of the Registrar.

Q Now, does that committee meet?

A Yes.

Q Approximately how often?

A Threee to four times a year.

Q What is the function of this committee? What does it do?

A It reviews the curricular offerings of the college, makes recommendations to the faculty as a whole as to any changes that ought to be made in our offerings, in our programatic offerings, in matters affecting requirements for graduation, recommendations to institute a new major or discontinue a major, to pass through this committee and on to the faculty.

Changes in requirements, whether departmental requirements or college-wide requirements for graduatinn have to pass through this committee.

Q Dean Mirsky, can a course be added at your school or eliminated at your school without the approval of this committee?

A The committee has delegated to the office of the dean the right to approve the addition of new courses within a department and the dean is given the responsibility of determining whether or not this change, as--adding a course or possibly dropping a course which is less significant, in any way affects any other department or goes beyond a simple departmental decision.

If in the opinion of the department chairman and the office of the dean this is an internal matter within a department, then the dean may approve the institution of the course and report periodically to the committee on curriculum for such changes.

Q Otherwise--

A Id it is felt that goes beyond the limits of the department itself, then that mus- come before the curriculum listed.

Q And if it goes beyond the limits of the department itself, I assume the course or program cannot be added or deleted without its approval; is that correct?

A Correct.

Q Has this committee in fact dealt with the deletion of an education program at your school, Dean?

A Yes, it did.

Q Would you tell us about that, Dean Mirsky, tell us whether--when this happened and then describe the events as they transpired.

A It is a painful chapter for me.

In about the year 1969, 1970, the academic year 1969, 1970, when I was only one year in the--in the position of dean at Stern College, I reviewed the programs at the college and I recommended to the Committee on the Curriculum that for whatever reasons I thought cogent we eliminate an education major at the college.

The curriculum committee supported

me and we began to eliminate the program.

We then went on report to the faculty.

The faculty debated the issue and reversed the decision and so I had to reinstitute a--an education major at the college.

Q You wanted to eliminate?

A Yes.

Q And the curriculum committee wanted to eliminate; is that correct?

A Yes, which they had voted to eliminate.

Q And that was on the vote of the faculty; was it not, Dean?

A Yes.

Q By the way, Mr.--Strike that, please.

Now, do you have a committee on admissions?

A Yes, we do.

Q And that is listed, of course, in Employer's Exhibit 105; is it not?

A Yes, it is.

Q Does that committee actually meet?

A Oh, yes.

Q What does it do?

A It sets standards for admission into the college and then reviews applications for admission and determines which students shall be admitted and which students shall not be admitted to the college.

Q What do you mean by "sets standards," Dean Mirsky?

A Well, there are two kinds of standards that would be set.

One would be quantatative and one would be qualitative, so that we--there is a basic statement about what are the minimum requirements that the faculty--faculty would expect a student who is admitted to the college to have, and then either directly or by delegating its authorities to the Office of Admission or to other members of the faculty or even to students reviews are made of the applications that are presented, the documents that are presented in support of applications for admission, and a decision is made on whether the student should be admitted or not admitted to the college.

Q You told us they set a qualitative standard, students who do not meet that standards are not admitted.

Is that a fact?

A Well, no one factor in itself is accepted.

If a student should not--as I understand it, the functions of the committee, if a student does not meet without question all of the qualifications, qualitative or quantitative, then that must be brought to the committee, as a whole, and they review the total application and make a decisimn.

So that they may in their judgment recommend the admission of a student who perhaps has not met the minimum quantitati-e statement.

Q But the decision is yours--is that of the committee, I take it?

A It is the committee's decision; yes.

Q And if a student is not admitted to the college obviously he does not pay tuition to the university; is that so?

A Yes, unfortunately.

Q So that the number of tuition-paying students is determined by this committee of the faculty; is that right ?

A Yes. In a way.

Q In essence--

MR. SHECTMAN: Could I have that question read back?

I'm sorry, the last question and answer.

HEARING OFFICER: Could you repeaq the question, please?

(Record read.)

Q (By Mr. Kramer) On Employer's Exhibit 102 on page 3, reference is made to the Committee on Promotinns; is that correct?

A Y3s.

Q And is that committee also listed on Employer's Exhibit 105?

A Yes- it is.

Q That committee, I take it, is an elected committee; is that right?

A Yes, it is.

Q Would you tell us what that committee does?

A The committee receives requests for promotion by faculty members or concerning faculty members from lower rank to an upper rank, reviews those requests and makes a recommendation on whether or not that request should be granted, which th en I as the dean forward to the office of the president through the vice president for academic affairs to which I may or may not add my comments.

Q Now, Dean Mirsky, has this committee, during your term as dean, recommended that certain faculty members not be promoted?

A Oh, yes.,

Q Have you accepted that recommended?

A Yes.

Q In other words, you have not provided a contrary recommendation in those cases?

A No, I have not.

Q And was that recommendation accepted by the vice president of academic affairs on behalf of the president, and when did not have a vice president of academic affairs -y the president directly?

A Yes.

Q In all cases that you remember.

A Yes-- yes.

Q Now, has that committee also made positive recommendations with respect to promotinn?

A Oh, yes.

Q Have you accepted all of those recommendatinns?

A Yes.

As far as I can remember I have approved-- recommended whatever the faculty committee recommended.

Q And have those recommendations in fact been approved?

A The great majority of. Not in every single case, no.

Q But in the great majority of cases?

A Yes.

Q And that is by the president of the institution or his delegate, is that so?

A Correct; yes.

Q Now, let us turn for a moment to Employer's Exhibit 105.

There is a committee there called the Shape Major Committee?

A Yes.

Q Could you tell us what that Shape Major Committee does andhow it came to come to--came into existence?

A Yes. The Stern College is a small, comparatively speaking, small liberal arts college and therefore cannot offer as full a range of majors in accordance with the requirements set forth in the faculty document for the development of departments and majors and in accord with the financial commitment that must be made to support such a major.

The faculty, therefore, on recommendation of the Committee on Curriculum instituted what we call a Shape Major.

In a simplified way that might be said to be a custom-tailored major, that if we do not have a formally structured major at the college which a particular student would like to pursue, she can solicit among the faculty to see if there is a faculty member who will review with her what her desires are and if she can find at least one faculty member who she can convince that what she has in mind is a respectable, acceptable, feasible undergraduate liberal arts major, he helps her draw up a formal request which contains an allocation of what course she will take, what the goals of that major are, and so on.

Under the regulations passed by the faculty in addition to having an individual sponsor, each such request countersigned by a single sponsor must be reviewed and approved by a committee of the faculty to be as much as is possible representative of various discipoines or major groupings within the liberal arts curriculum.

The Shape Major Committee is such a committee, and students who have a desire for one of these custom-tailored or Shaped Majors presents this to the committee which reviewed the requests and then approves or disapproves.

If the committee approves the request, then that becomes the official major requirement for the student and if the student wants to earn a degree when she applies for the degree her record is checked and if she has met all of the requirements of this major as she would have had to meet the requirements of one of our established majors, she is awarded the degree.

Q And if the committee disapproves?

A Then she cannot have that major at the college.

Q Then would that affect whether she stayed at the college, possibly?

A Yes, oh, yes. If there have been--in my memory I can think of two students who withdrew from the college because they felt that they could not get what they wanted at Yeshiva.,

Q And the tuition of those students was lost to the University?

A Yes.

Q Now, let us turn to the committee on academic statistics which is listed on both Employer's Exhibit 105 and Employer's Exhibit 102.

Would you tell us what that committee does?

A Yes. It is a committee established by the faculty to which the faculty refers requests for certain studies in which it feels it needs to have analysis of the statistics involved.

It may have to do with grading practices and distribution of grades.

It may have to do with registration and admissions patterns.

If the faculty is interested to discover patterns in attritinn rates they will ask one of the standing faculty committees or an ad hoc committee to look into this matter and ask the committee on statistics to serve as a kind of service committee to do the necessary statistical studies that it needs in order to support its studies and help it arrive at certain conclusions or decisions.

Q You have told us, Dean Mirsky, about a faculty committee on grade distribution which is not listed on Exhibit 105 or Exhibits 102 or 10--correction, 102 and 103.

Would you tell us what that committee does ?

A Well, it is not a standing committee. In other words, what it did.

It was an ad hoc committee that is no longer in existence.

Q What did it do?

A It studied the distribution of grades at various levels and tried to assess what those grades meant, as far as student evaluations are concerned, and then recommended--actually recommended a change in our grading system.

Q To whom?

A To the faculty.

Q And was that change approved by the faculty, Dean?

A   Yes. We had a grading system which was a little system where grading A through F with pluses and it recommended a change for the introduction of minuses as well as pluses and then asked the committee on standards to review the implications of that in student evaluation.

Q   Does the type of grade system that the college maintains have an affect on the number of students or quality of students that can be recruited?

MR. SHECTMAN: I object.

HEARING OFFICER: What is the basis of this?

MR. KRAMER: Well, he is the dean of the school and has spent over 20 years in education.

MR. SHECTMAN: Your question could be--well, could we have the question back?

HEARING OFFICER: Yes.

MR. KRAMER: It is a question, does the school--

MR. SHECTMAN: Could we have it read back, please?

I got lost on that.

(Record read.)

MR. SHECTMAN: Well, there is a few--my objection is that first of all there is more than one question within it. It is about a number of students and quality of students.

I don't thinkthere is a proper basis laid for this question in that I--immediately coming to my mind is a question of whether the students would be aware of the grading system and somehow they wouod be awar how Dean Mirsky--

MR. KRAMER: I withdraw the question.

HEARING OFFICER: Okay.

Q (By Mr. Kramer) Dean Mirsky, the faculty and you thought it important enough to establish a committee on grade distribution, did you not?

A Yes, we did.

Q Now, why did you establish that committee?

What was the real cause of your establishing that committee?

A The committee was established because there were students and faculty members who felt that they wanted a more exact system of, or at least wanted a more exact system of or at least wnated to consider the advisability of having a more exact system of evaluating students on a grade point scale, to help better discriminate among students in any given courses and in giving them a grade so that they could better compare one student to the other and project that comparison as--which is essentially what grade is on the student's permanent record.

Q At your school, Dean Mirsky, who determines what type of grading system will be in effect?

A The faculty.

Q Dean Mirsky, how long have you been in education?

A From 1946 on.

Q And you have been at Yeshiva College for 25 years?

A For longer.

Q Yeshiva University, rather.

A Yeshiva University for more than twenty-five years.

Q All right.

As dean of the college are you aware of the controversy, if any, that exists today in American education over the structure and use of grades in class standing?

A Yes, I am.

Q Would you tell us what that controversy is all about?

MR. SHECTMAN: I object to this line of questioning on its relevance and materiality.

MR. KRAMER: I am glad you have done that because I would like to explain to the Hearing

Q By the way, who establishes the standards you just referred to, 2.0 standard?

A That is made by the Committee on Standards.

Q When a student transfers voluntarily, I take it the University loses the income?

A Yes.

HEARING OFFICER: We will take a ten-minute recess at this point.

MR. KRAMER: I have pretty well exhausted this line anyway.

HEARING OFFICER: We will have a ten-minute recess.

(Whereupon, a ten-minute recess was taken.)

(Whereupon, at 3:35 p.m., the hearing reconvened.)

HEARING OFFICER: All right.

Back on the record.

Mr. Kramer?

Q (By Mr. Kramer) Now, Dean Mirsky, you told us that there was a faculty ad hoc committee on scheduling patterns.

A Yes.

Q What does that committee do?

Before you answer that question, when did that committee deliberate?

A It was during the academic year '72, '73 carried over into '73, '74 at which pointwe instituted new scheduling patterns.

Q Now, when did the grade distribution committee deliberate ?

A That was back in 1970, 1971, 1972.

Q With respect to the scheduling pattern committee, would you tellus what it did ?

A Yes.

If you will permit me a word of explanation, it--the number of credits that a course carries depends upon the number of hours that the course meets per week and the kind of work that is done in that course.

So that courses have various numbers of meetings during the weekdepending upon the number of credits that the faculty--that is assigned to that course.

Most of the courses are three credit courses and have to meet three times a week.

Some credit courses carry two credits, some carry four or five credits and some we always have to schedule course for a different number of meetings every week.

When the courses are eccentric in their patterns of meeting during the week, it makes it difficult for a student to fill out a program in which the student can take all of the courses that she wants, adding up to the number of credits that she needs in order to graduate within the stipulated or required--desired number of semesters.

To ease the difficultywe therefore tried to study these scheduling patterns and establish fixed patterns for meetings so that certain course would meet on fixed days during fixed hours of the week to eliminate eccentricities from the scheduling pattern and the committee studied these patterns, drew up about six or seven different models of suggested patterns that could be considered by the college, presented these to the faculty, the number of meetings, they went rhough each possible pattern and finally approved one pattern of courses.

Q All right.

The faculty approved?

A Yes.

Q Just as they approved the grade distribution change; is that so?

A Yes.

Q By the way, Dean Mirsky, did you have the authority to veto these scheduling pattern changes?

A Yes, I would have that authority in a sense I would probably have been able to raise certain administrative objections, if it were really--I felt adversel affected the operations of the college and go to the faculty and ask them not to do certain things.

Q Asked them?

A Yes.

Q Could you have ordered them not to?

A I think if I were to--it is a matter of judgment. I would certainly have to appeal to support from the vice president for academic affair and the president to make a final decision.

I don't know that I could personally say "No" to a faculty decision on these matters.

Q Is that also with respect to grad distribution?

A Grade distribution, it is a matter of my own judgment, grade distribution I think much more clearly belongs to the jurisdiction and final decision of the faculty than certain decisions on how many, you know, hours per day the college can afford to be in operation and so on.

It brings in other consideratinns and we have to bring in other officers.

Q Now, let us turn to the ad hoc committee on academic calendar. When did that committee meet?

A That committee was actually developed in 1972, 1973, I believe.

At that time certain questinns arose as to when sessinns should begin, the academic year should begin, and when the academic year should end and then the distribution of holidays and so on through that academic year.

And there were any-series -- of meetings--models, suggested, given the restraints that are placed upon the college b- the regulations of the Commissioner of Education of the New York State Department of Educatinn, we can divide our own academic calendar.

Q To whom did the committee report?

A To the faculty.

Q Does the calendar require approval of the faculty?

A Actually, the line in that situatinn was that the faculty was asked to set up its calendar, the calendar that it wanted to, and then there was a request that the undergraduate colleges, Yeshiva College and Stern College for Women, try to develop a unif-rm calendar, and so this was directed to the academic counsel of the undergraduate schools with approval asking the Yeshiva College to give its academic calendar and to ask the academic council to approve the basic principles on uniform academic calendar.

So that the Stern College faculty decided what patterns it would like to have for Stern College and then asked its representatives to try to work out with the Yeshiva College a uniform calendar.

Q Now you told us there was a committee on personnel and budget. Is that right?

A Yes.

Q And what was the function of that committee?

A It was a committee created by the faculty as a result of and perhaps a response to the growing awareness of budgetary strictures that were coming in to play at the college, and the faculty created this committee to consider the implications of budgetary strictures, and retrenchments and to try to help develop procedures and steps,to take steps which allowing for ~~to~~ adjustment--budgetary adjustment would also affect as little as possible the academic offerings of the college, and where the academic offerings of the college were to be affected by budgetary considerations, to help develop a set of priorities or steps that could be taken towards this end.

MR. KRAMER: Would you please mark this as Employer's Exhibit 106 for identification.

(Thereupon, Employer's Exhibit 106 was marked for identification, of this date.)

Q (By Mr. Kramer) Dean Mirsky, I show you the letter under the letterhead of Stern College for Women, Yeshiva University dated February 23, 1971, apparently to you and signed by a Dan Vogel, Chairman for the Committee.

Are you familiar with that letter?

A Yes.

Q Who is Dan Vogel, Chairman for the Committee?

A Dan Vogel is a member of our faculty in the Department of English, a full professor, and he formerly occupied the position of Dean of the college.

Q Did you receive this letter from--

A Yes.

Q From him?

A Yes, I [illegible]

Q Did you respond to Professor Vogel?

A Yes, I did. I acknowledged receipt of the letter and responded with my comments.

MR. KRAMER: Mark this Exhibit 107.

(Thereupon, Employer's Exhibit 107 marked for identification, as of this date.)

Q (By Mr. Kramer) I show you Employer's Exhibit 107 for identification, a memo under the logo Yeshiva University, to Professor Dan Vogel from Dean David Mirsky.

(Showing to witness.)

Is this in fact your response, Dean Mirsky?

A Yes.

MR. KRAMER: I offer Employer's Exhibit 106 and 107 in evidence.

HEARING OFFICER: Any objection, Mr. Shectman?

MR. SHECTMAN: One moment, please.

HEARING OFFICER: Certainly.

MR. SHECTMAN: No objection.

(Thereupon, Employer's Exhibits 106 and 107 for identification, were received into evidence, of this date.)

Q Dean Mirsky, did you also receive from the committee a set of minutes of its meeting dated December 6, 1971.

A Yes, I did.

Q Did you receive this in the normal course of your business affairs?

A Yes.

Q For academic affairs, as we would say?

A Yes, it was forwarded to me by the Committee.

Q And have you produced it here today from your files?

A Yes, I did.

MR. KRAMER: Employer's Exhibit 108 for identification, please.

(Thereupon, Empl9yers Exhibit 108 marked for identification, as of this date.)

Q Dean Mirsky, is this in fact the set of minutes to which you just referred?

A Yes.

MR. KRAMER: I offer Employer's Exhibit 108 in evidence.

MR. SHECTMAN: I just--it is incumbent to note for the record that the dates of the last three exhibits 106 through 108 are 1971.

I want to bring that to the attentinn of the Board.

No objection on these exhibits.

(Thereupon, Employer's Exhibit
108 for identification, received
into evidence, as of this
date.)

Q (By Mr. Kramer) Now, Dean Mirsky, is it correct that the Committee on Personnel and Budget was created in response to a financial crisis at the institution during 1971, 1972?

A Yes.

Q And 1972, 1973?

A Yes, that is correct, and the committee is still in existence.

Q Now,. referring to this exhbit?

A Yes.

Q Dean Mirsky, as a basis for this question, but not necessarily as a limitation to its anaswer, would you tell us what items are what--what discussions were finally made by the Committee to help alleviate the crisis at the school and whether they were in - fact accepted?

A Well, I discussed this and some of the other items with the committee.

They felt that all of these things that they had developed as a result of their meeting ought to be taken into consideration; to a degree the rescheduling or the Committee on Study Scheduling Patterns is a response to one of the recommendations made by this committee in scheduling that we reinstitute or we restudy our scheduling patterns to see what we could do to help reduce further need for extra sessions and make it easier for students to get the courses that they wanted.

And we did look in to some of these other programs which are now--have been instituted such as joint programs with the graduate schools to offer advance courses through the combined undergraduate, undergraduate offerings at the advanced levels and we have eliminated what is implied here, some of the electives which existed in such departments as Art and Music, which we have cut back on and no longer offer because they are not majors, we never had a major- they were service courses and so we retain those which are necessary for meeting college requirements and cut down on the number of electives over--offered in some of these areas.

Q Would it be correct to state that the recommendations of this committee were generally effective?

A I think that they did generate thought and led to some actions; yes.

MR. KRAMER: Mr. Hearing Officer, if I

P R O C E E D I N G S

HEARING OFFICER CHAIET: Let us go on the record.

The hearing is now in order.

The resumption of the hearing in Case 2-RC-16662.

Mr. Kramer will you please call your witness to the stand?

MR. KRAMER: Dean Mirsky.

Whereupon,

DAVID MIRSKY,

the witness on the stand at the time of recess, being previously sworn, resumed the stand and testified further, as follows:

HEARING OFFICER: Dean Mirsky, you are still under oath.

THE WITNESS: Yes.

DIRECT EXAMINATION (Cont'd)

Q (By Mr. Kramer) Now, Dean, referring to Exhibit 105, to whom does the Committee on Academic Statistics report?

A To the faculty.

Q And the Committee on Adademic Standards?

A To the faculty.

Q The Committee of Admissions?

A To the faculty.

Q And the Committee on Awards?

A To the faculty.

Q And the Committee on Curriculum?

A To the faculty.

Q The Library Committee?

A To the faculty.

Q The Faculty Welfare Committee?

A To the faculty.

Q The Shaped Major Committee?

A That generally does not report to anybody. Simply approves the programs.

Q And the Committee on Promotions?

A To the faculty.

Q With its recommendations; is that so?

A Yes, a report on what business it has done during the year.

Q Does it seek approval of its recommendations from the faculty? Or does it just report them?

A Just reports.

Q All right.

Now, to whom does the Ad Hoc Committee on Personnel and Budget report?

A To the faculty.

Q And on grade distribution?

A To the faculty.

Q And on academic calendar?

A To the faculty.

Q And on scheduling patterns?

A To the faculty.

Q And to whom does the Committee on Bicentennial report?

A To the school committee.

A Well, that is--that committee is just in formation and it is in formation at the request of the vice president for academic affairs, so that it would probably report on its activities to the faculty rather than at the behest of the vice president of academic affairs.

Q You have told us that the faculty meets at least four times a year.

A Yes, it is mandated to meet four times a year and may meet more.

Q And at that meeting--at those meetings, part-timers are eligible to participate?

A Yes, they are.

Q And do participate?

A Yes, they do.

Q Now, when you speak of the faculty, are you speakint of the Stern College Senate or is that a separate body?

A The Stern College Senate is a separate body.

Q All right.

Are their faculty representatives on the Stern College Senate?

A Yes.

Q Are they listed on Exhibit 105?

A Yes, they are.

Q Now, the Stern College Senate's constitution is in evidence, is it not, Dean Mirsky?

A Yes, it is.

Q Would you tell us, based on your experience at the school, Dean Mirsky, the kinds of things that the Stern College Senate does?

A Under the Constitution of the Senate, all matters affecting the affairs of the college are the proper matter for consideration and action by the Senate.

The only thing that the senate does not take up are matters pertaining to specific individuals.

Q When you say "all matters, Dean Mirsky, would you giveus some illustrations of the points -- the lines of things that the senate has taken up over the last year or so?

A Yes. Over the last year or so the senate has forwarded to the faculty a recommendation on the change in the foreign language requirement for the degree at Stern College.

It has sent to the faculty requests for changes in the scheduling patterns.

It has under consideration now a request or a--I don't know what the proper word would be, but a resolution asking that we change the science requirement at the college.

It has reviewed and expressed its conclusions concerning programs such as a--what we call a cooperative program that we have had at the college.

It has worked with the Committee on Admissions to determine whether it has any resolutions that would like to pass concerning admissinns and it has raised certain matters having to do with student life at the college.

Q Now, the recommendations that you have described, the senate to have made, were made to the faculty; is that correct?

A Yes, under the constitution of the Senate any resolution which calls for action by the Senate must go to the faculty which can approve it, not approve

Dean Mirsky?

A   Yes, they have been in the past and can be in the future.

Q   Do students have a vote in the faculty?

A   No, they do not.

Q   Do they have a vote in the senate?

A   Yes.

Q   Now, Dean Mirsky, let us turn to Employer's Exhibit 100 in evidence and more particularly to the chairmen listed on that exhibit.

Are these chairmen elected?

A   No, they are appointed.

Q   How are they appointed?

A   They are appointed upon my recommendation by the president.

Q   Dean Mirsky, before appointing a chairman, do you consult with the members of the department as to who that chairman will be?

A   I have not done so; no.

Q   And you have appointed chairmen?

A   Yes.

Q   Is a vote held in the department as to who will be the chairman?

A   No.

Q   It is your appointment--recommendation of appointment to the president?

A To the president; yes.

Q Now, do chairmen have reduced load at your school?

A Yes, they can have a remission of teaching or workload.

Q And what is that remission?

A Remission of one quarter of their teaching time.

Q And do they in fact have such a remission?

A Yes.

Q What is considered to be a full-time load at your school?

A Twelve contact hours per semester.

Q Or equivalent?

A Or equivalent.

Q What is meant by"the equivalent"?

A Anything that is approved by the college as meeting that workload requirement. It can be a remission as in the case of a chairman for services rendered, administrative services rendered to the college.

It may on occasion be a remission into permission to carry on research or some other activities of that sort.

Q Now, would you tell us, Dean Mirsky, what role, if any, is played by the chairmen of departments in your school with respect to the hiring of full-time and part-time faculty?

A Yes.

When there is a need to add staff to the faculty generally a need called to my attention by the Chairman of the department, we consult as to what the departmemental needs might be and what the budgetary possibilities are, then the Chairman and/or I, interview people for the position.

We then sit and consult together and upon recommendation of the chairman we agree on appointment, we then pass that recommendation asking for approval to the office of the president.

Q Dean, have you ever appointed any full-time or part-time faculty member who was not acceptable to the chairman of a particular department?

A No.

HEARING OFFICER: Excuse me.

When you talk about discussing with the chairman the need for a new appointment, do you discuss a particular person or a position?

THE WITNESS: No; first we discuss the position.

In other words, is there a need for an additional person in order to fulfill the staffing requirements for the department.

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That will be based on the question of registration, the need to cover courses.

Since we have a workload, maximum workload for faculty of 12 contact hours or their equivalent, if the department who wants to offer a number of courses which add up to more than the total available to them because of the number of people they have, they would then ask for additional staff to meet those requirements-

HEARING OFFICER: Do you seek approval of the position before bringing in the name of a person, or do you combine the two when you make your request to the--I guess the president, you said.

THE WITNESS: Yes, well, I report to the president through the vice president for academic affairs, so, normally, I would take this up with the vice president for academic affairs and we discuss the need to add people and then if we should be told to explore further, we then begin to talk about individuals.

Q (By Mr. Kramer) Dean Mirsky, your testimony applied to a fulfilling of vacancy; is that correct?

A No. Even for adding people into--for not to fill a vacancy, but simply to augment the strength of the faculty.

Q But it covered both the filling of a vancy and additional personnel?

A Oh, yes.

Q All right.

And the chairman;s role in terms of selection of the particular individual is the same in either case, I would assume?

A Yes.

Q Now, you have actually had discussions with chairmen on the subject of hiring, have you not?

A Oh, of course.

Q During those discussions was particular--what particular chairman -- chairmen -- speak for themselves, as administrators or were they reporting to you a consensus of their department as to who should be hired?

A Well, in my discussions with the chairmen I talk to the chairmen as the decisionmaking person within the department.

If they, on their own, may or may not have discussed that with other people, I don't know. It is not required nor do I inquire if they have.

Q And in their discussions with you I assume there was no reference to having such discussions with others?

A No.

Q Now, do your chairmen also play a role in connection with the termination or non-reappointment of probationary full-time faculty and also part-time faculty?

A Yes.

Q Would you tell us about that, please?

A Yes.

Q Would you tell us about that, please?

A Yes. One of the functions which the chairman is to fulfill is to evaluate and assess the performance of faculty members and I meet fairly regularly with all chairmen to discuss these matters, particular faculty members who have been most recently appointed, and we try to evaluate to come to some understanding of their place and their role and how well they are fulfilling the needs and expectations of the department.

And we then try to arrive at a decision as to whether to continue those faculty members or to terminate their appointment.

Q Have chairmen listed on Exhibit 100 actually made recommendations to you for the termination of faculty members, or the non-reappointment of faculty members?

A Yes.

Q All right.

Have those recommendations generally been accepted by you?

A Generally, yes.

Q And have they made recommendations for the retention of probationary full-time faculty for that matter part-time faculty?

A Yes, yes.

Q Have those recommendations been accepted by you, Dean?

A Yes, generally.

HEARING OFFICER: Excuse me.

On the termination or non-appointment, is that a decision that you make personally or is that something that you take up with the vice president or president of the school?

THE WITNESS: Well, all appointments at--at the University are full-time people, personnel are made by the office of the president.

However, they are based on the recommendations of the dean and the school which we forward to the president.

So when an appointment has to be made, the official letter of appointment goes out from the office of the president, either signed by the president or by whomever he may delegate to sign the letters for him.

Possibly the vice president for academic affairs.

On termination, the letters have been,at leas in Stern College, have been sent by me.

Q Focusing, Dean Mirsky, on the hiring process--

A Yes?

Q -- is it usual for the president of the university to interview a new hiring into your school?

A Well, in my experience, this has never occurred.

Q Is it usual for the vice president of academic a-fairs to interview a new hire in your school?

A No.

Q Would it be correct to state that the approvals by the president or vice president of academic affairs of the recommendation that you make upon the recommendation of the department chairmen or routine?

A Yes, I think that would be a fair statement.

Q All right.

Now, you have told us that you generally accept the recommendations of the chairmen concerning the termination or non-reappointment of full-time faculty or part-time faculty; is that correct?

A Correct.

Q Was there a situation in which you disagreed with the chairman--a particular chairman?

A Yes, there was one such case in particular in which a chairman and I disagreed and could not come to a consensus.

Q Would you tell us about that, please?

A Yes.

This was in approximately '70, '71, when--because of a shrinking budget and falling registration we had to release some people from our staff.

One of the departments thus directed was the Department of History, and I informed the department chairman that we would have to cut the staff, full-time staff in the History Department by one person.

We then discussed this and the chairman then felt that one of the full-time members of the department should be terminated and I disagreed.

I felt that in the overall interest of the college and the balance and in view of our needs a different member, full-time member of the department ought to be terminated.

We discussed this for a while, came to no amicable consensus. I then forwarded to the president my recommendation, and the Chairman of the department forwarded her recommendation to the president.

The president sustained me. The Chairman of the department then appealed the decision to the University Review Committee which is a committee that exists at the University.

Q Appealed the decision of the president of the institution; is that correct?

A Yes.

Q All right.

Then tell us what happened.

A Well, the University Review Committee met and heard the case.

I know since it was reported to me and I saw their report, that the chairman was invited to appear before them and give her presentation.

I know that I was invited because I was there, and I presented my side.

The Review Committee considered the case and then issued a--a report with its conclusions which it sent to the president.

Q Is this university faculty Review Committee made up of administrators?

A No.

This committee is composed of faculty members from each of the academic units [illegible] the University elected by each of those units.

Q And is this university Faculty Review Committee provided for in the faculty hand book which is Employer's Exhibit 51 appended to Board Exhibit 2?

A Yes, there is a statement describing the function and the constitution of the university faculty review committee in the faculty hand book to which you refer.

Q Now--

MR. KRAMER: By the way, Mr. Hearing Officer, it is the university's position that the members of the Faculty Review Committee, the university Faculty Reviews Committee are supervisory or managerial employees within the meaning of the Act, and that is independent of whatever other positions that have been taken here so far.

HEARING OFFICER: While we are on the subject of stating positions, I noted in the previous record that -- indicated employees were sought to be excluded by the employer; is that still the position of the employer?

MR. KRAMER: I would like to think about that.

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MR. SHECTMAN: Could you, Mr. Hearing Officer, clarify your understanding what "for indicated employees" means?

HEARING OFFICER: From what I understood from the record here, they were talking about positions--empl9yees who hold positions as professors who teach and who also hold administrators' positions such as in the registrar's office or as--as Dean Mirsky.

THE WITNESS: I did not hear what you said,you mentioned my name.

HEARING OFFICER: Just in terms of an example.

THE WITNESS: Oh, all right.

MR. KRAMER: Will you please mark this Employer's Exhibit 109 for identification?

(Thereupon, the document referred to marked Employer's Exhibit 109 for identification, of this date.)

BY MR. KRAMER:

Q Dean Mirsky, I show you Employer's Exhibit 109, marked for identification, a document entitled Yeshiva University Faculty Review Committee by Professor Doris Goldstein, Chairman of the Department of History--

A I think you skipped that.

Q Correction; let me correct that.

Q I will start again. Yeshiva University Faculty Review Committee, in the matter of the appeal by Professor Doris Goldstein, Chairman of the Department of History, Stern College, on behalf of Dr. Carole Gruber, May 1, 1972.

Are you familiar with this document, Dean Mirsky?

A Yes, I am.

Q Is this in fact the report of the Faculty Review Committee in the matter you just discussed?

A Yes.

Q The conclusinns of that Faculty Review Committee can be found on pages 4 and 5 of this document; is that correct?

A Yes.

Q Did the Review Committee in fact have a conclusion with respect to the role of department chairmen in the termination of faculty at your school and at other schools of the university?

A Yes, they did.

Q And that is found in the second paragraph--second paragraph on page 4--third paragraph on page 4?

A Yes, it is in context, so there is some statement before, preparatory to their conclusion and it goes beyond it, but the gist of it is in that paragraph.

MR. KRAMER: I offer Employer's Exhibit 109 in evidence.

MR. SHECTMAN: No objeettion.

HEARING OFFICER: Received.

(Thereupon, the document marked Emplbyer's Exhibit 109 for identification, received in evidence.)

BY MR. KRAMER:

Q Now, Dean Mirsky, are you familiar with how your faculty is evaluated?

A Yes.

Q Would you tell us how that process goes on?

A Well, the manner in which it is evaluated is something that I mentioned before, that I meet with the Chairman and we discuss the faculty members and conclusinns about to--how they are fulfilling the needs and the expectations of the department and the college.

The chairmen convey to me their evaluation. There is no prescribed method at the college by which such evaluations may be made, but chairmen can use any way that they do, to my knowledge, because it has been so reported to me, some of the chairmen visit the classrooms for -- of the faculty members, sit in and try to evaluate their performance that way.

Other departments develop departmental evaluation forms which they then ask students in each course to fill out and report back to the department chairman on the basis of that--on the basis of that, he evaluates them and then be comes to their conclsuion which he brings to me.

Q Departmental chairmen have actually sat in on classes; is that a fact?

A Yes.

Q Does that require admission of the particular faculty member involved or chairman, authority to do this on his own?

A The chairman can do that?

A I believe from what chairmen have told me usually is--as a matter of courtesy, they inform a faculty member it is their intention to do this.

Sometimes they may even give them a specific day but they can do that as part of their departmental responsibilities.

Q It doesn't require their permission, in other words?

A No.

Q Now let us turn to, Dean Mirsky, to tenure.

Would you tell us what role your chairmen play in tenure decisions at your school?

A When a decision must be made on the granting of tenure to a member of the faculty, the chairman of the faculty--the chairman of the department is--submits a recommendation as to whether or not tenure should be granted to that individual.

That recommendation is submitted to the office of the president, through me, and the decision is then made in the office of the president.

Q Now, is that recommendation made as a consensus recommendation of the department as they would say, or is that recommendation made, to your knowledge, by the chairman himself, individually?

A I don't know that I would have knowledge of it but it is not--a consensus is not required. The department chairman who must submit the recommendation if a department chairman wants to consult with other members of the department, there would be no reason why I presume he couldn't, but the responsibility and my expectation is that I will get the recommendation of the chairman as the chairman of the department.

Q And is it presented to you in that fashion?

A Yes.

Q Have chairmen come to you and said, My department is divided, I have no recommendation to make"?

A No.

Q Not at any time while you have been dean?

A Not in my experience, no, sir.

Q And you have not gotten minority or majority reports or anything of that type from a department, have you?

A No.

Q Are the chairmen's recommendations for tenure in favor of tenure generally accepted by you?

A Generally, yes.

Q And are they generally approved by the president of the institution?

A Yes, they have been in the past.

Q Have chairmen recommended negatively with respect to tenure?

A Yes, they have-

Q And have those recommendations generally been accepted by you and passed along to the president with your endorsement?

A Yes, they have.

Q And have they generally been approved by the president?

A Yes.

Q Is it a fact, Dean Mirsky--I think it is in the record but I want to be sure--that the chairman together with yourself make up the Stern College Promotion Committee?

A Yes, that is as it is stated in the faculty document--could you repeat that, please?

Q That the chairmen together with yourself, make up the Stern College Promotion Committee.

A No, not the Promotions Committee.

The curriculum committee is made up of the chairman. The Promotion Committee is elected by the faculty.

Q Now in connectinn with that Promotions Committee, sir, does the chairman have a function?

A Yes.

Q Would you tell us about that, please?

A Yes.

When a faculty member is being considered for promotinn from rank to rank a recommendation of the chairman is solicited.

If it has not already been submitted by the chairman.

Q Do you attend the meetings of that committee?

A Yes, under the faculty statute I am the Chairman of the Committee on Promotions and the membership is elected by the faculty.

Q Would you tell the Hearing Officer, what the weight or effect of the chairman's recommendations are within the deliberations of that committee, as a general matter? If that may be done.

MR. SHECTMAN: I ask for direction that the witness not state a conclusion here but state specific facts or occurrences by which such a conclusio as to the weight of anyone's opinion might be.

MR. KRAMER: I think the witness should be allowed to answer the questinn. I think he has been very responsive.

HEARING OFFICER: That was not an objection, was it?

MR. SHECTMAN: No.

HEARING OFFICER: That was a request?

MR. SHECTMAN: Right.

THE WITNESS: I was going to say that obviously since a decisinn is made by individual vote of each faculty member, in other words, it is a matter of vote of each member of the committee as to whether to approve or to disapprove a recommendation, it is hard for me to say how much weight they put in their own minds to any single factor, but, generally speaking on the basis of experience any time that there has been an instance in which a chairman has not recommended promotion, that promotion was not approved by the committee, so I would assume that certainly a negative recommendation carries a great deal of weight in the minds of the committee and a positive recommendation they would weigh with all other factors if they have to take--that they have to take into mind.

Q Dean Mirsky, is there an associate dean at Stern College for Women?

A No, there is not.

Q Is there an asssistant dean at Stern College for Women?

A No, there is not.

Q In addition to yourself, Dean Mirsky, what administrative staff do you have supporting you?

A The office of the dean, I have one person who serves as an assistant to the dean and then there are secretarial staff.

Q Are there any other administrative people who help you? At the school, I mean.

A At the school, yes, but not th rough the office of the dean.

There is an assistant registrar through the office of the registrar.

There is a director of student services through the office of the vice president of student affairs.

There is someone assigned by the office of student finances to deal with student finances.

There are--there is a director of residence hall assigned through the office of the vice president for student affairs.

There are librarians assigned through the university librarian.

There maybe one or two that I have missed but essentially that is it.

Q Those administrators that you just named, however, function in relation to students rather than to faculty, I take it, for the most part?

A Yes, except insofar as the life of a student touches the life of a faculty member and vice versa.

Q All right.

Approximately how many students do you have?

A Approximately 550.

Q Dean Mirsky, you have prepared Employer's Exhibit 100, have you not?

A Yes.

Q Could you tell us how many full-time and part-time faculty members are listed there?

A An exact cound--we have some 40 full-time faculty members and some 35, 36 part-time faculty members.

Q And you are theonly dean, I take it, correct?

A Yes.

Q With no assistant and no associate dean?

Correct?

A Correct.

Q What is the function of the assistant to the dean?

A The assistant to the dean supervises all of the work of the clerical and secretarial staff in my office, controls work flow, handles appointments and helps me insert matters, such as making--making some contact with some of the -- or liaison with the other administrative officers that service the college and similar activities.

MR. SHECTMAN: For the purpose of a clear record, since the position of the University has taken a position as to the status of assistant or associate deans, could we have clarified whether the assistant dean, to whom the witness has referred,is a it is so obvious that the ratio is 80-to-1. It just puts further emphasis on the fact that the Board ratios are as high as--I object.

MR. KRAMER: And contrary to all supervisory principals, I object to the statement by counsel for the University.

They are inappropriate, he is stating his conclusion.

HEARING OFFICER: The objection has been sustained. If counsel wishes to make an offer of proof, the offer of proof will be accepted.

MR. KRAMER: The offer of proof is that the ratio would be 80-to-1.

And that would be what the witness would answer.

I would like to go on, if I may, Mr. Hearing Officer.

HEARING OFFICER: Okay.

BY MR. KRAMER:

Q Dean Mirsky, do part-time faculty members participate in commencement?

A Yes, they do.

Q And that was--that us university commencement?

A Yes.

Q And do they participate in the state of the college presentation which is made in the fall of each year?

A You are referring to my addrdssing the college community at the beginning of the academic year, the answer is yes.

Q All right.

They don't stay home? That is no, I assume?

A No, they come.

Q What percentage of the courses taught at your school and of course this is an approximation, are sought by part-time faculty members?

A Some 25 percent of the courses.

Q Have part-time facultymembers listed on Employer's Exhibit 100 taught course--strike that.

Let me do it this way:

Are part-time faculty members listed on Employer's Exhibit 100 now teaching courses that were previously taught by full-time faculty members?

A Yes, th ere are some.

Q Would you tell us about that, please?

A Well,can I use the exhibit?

Q Absolutely.

HEARING OFFICER: Refer to the exhibit number when you discuss it, please.

decide that it would like to use its full-time people for more advanced courses or for courses in their specialities which they would then bring -- relieve the full-time member from teaching other courses and bring in part-time people to handle that or the reverse.

If a department has a desire to offer an advanced course or a highly specialized course, it would then ask to bring in a part-time person to teach that course because that required someone with special skills or special background and training, and the conditions within the college would not make it sensible, youknow, economically or even educationally to maintain that person as a full-time person with that specialty since the contribution to the college is therefore limited.

So that there are considerations within a department or within the college, as a whole, which would lead to a decision to employ a part-time person rather than a full-time person or vice versa, but there is nothing in a course itself which says that this course ought to be taught only by a part-time person.

HEARING OFFICER: Thank you.

You may continue, Mr. Kramer.

In the Department of Political Science, Dr. Bernstein is now teaching part time, once taught full time.

And that's about it. Again, without going back to the records.

Q Thank you, Dean Mirsky.

In selecting part-time faculty and in selecting full time faculty are different criteria used for selection or the same criteria used?

A The same criteria are used.

Q Would you tell us what they are, please?

A Yes, generally we look for our assessment of how good an instruction is, that is a classroom instructor, performer, the individual involved might be. The degree of preparation, graduate degrees held or publications, level of scholarship and things of that sort and these apply both to--in our consideration of employment for part-time people as well as for full-time people.

Q Are you aware, Dean Mirsky, of scholarly research and/o articles being published-pstrike that.

Are you aware of scholarly research being done by your part-time consultant or of articles being published by them?

A Well, I can think offhand of some part-time people who have published--there may be others who are working on them about which I am not aware.

Q Would you tellus what you know about that?

A Well, coming to mind for example, Professor William Cory I know just this summer, published a work on Soviet Policy in Relation to the Jews in that country.

I just read an article of his that was published in the Midstream Magazine.

There is a Professor Chaim Waxman, whose articles I have seen appeared.

Recently in a number of publications, part-time member of the faculty, use to be with us.

Abraham Feinberg, published a very significant work on Constitution-American History.

I am sure there are others that I can't think of at the moment.

Q So, do part-time faculty have office hours?

A Yes, they are requested to post office hours and make themselves available to students.

Q Do full-time faculty consult--have office hours?

A Yes, the same requirement exists for full-time, as well.

Q Do part-time faculty write letters of recommendations for students.

A Yes, of course.

Q To full-time faculty-- Do full-time faculty do the same thing?

A Yes.

Q Would part-time faculty attend department meetings?

A Yes.

Q To the extet that you have department meetings?

A The department calls its meetings. Its department meets within its own schedule and part-time members of the department are invited to participate equally and fully in those meetings.

Q Have you taught at Stern College?

A Yes.

Q Have you attended department meetings as a faculty member at Stern College?

A Yes, in the Department of English.

Q On part time--were part-time faculty members permitted to vote in your departmental meetings?

A The ones that-- I have to think about that, who was present there.

I think I can recall oneat a meeting which I was present at, at which a part-time member voted on a question; yes.

HEARING OFFICER: Is there any requirement as to tenure or the time at the school for a part-timer to be allowed to vote at such a meeting as noted in one of expression of gratitude for having made himself available for an individual that made himself available to--in our case, to the college.

Usually this is something that is done for an individual who comes in for limited number of lectures, even for single lecture and is not taken as a salary or compensation and is therefore called an honorarium.

Q Are part-time faculty at your school compensated on the basis of honorarium or honorariums?

A No, they are paid a salary.

Q And is there a salary scale?

A There is no fixed salary scale. There are established parameters for payment made to part-time faculty people who were brought in on the staff, depending upon their service, their background, their preparation, their degree of specialization, and so forth.

Q Is that different--go ahead.

A And that will range between the parameters set for each level for the college.

Q Is there a separate scale or range for full-time faculty?

A Yes, there is an established salary scale for full-time faculty.

Q And it is different than the one for part-time faculty?

A Yes, sir.

HEARING OFFICER: Excuse me.

Who sets the salary within the parameters? Is that somebody whose--is that something that is negotiated when--betweenthe individuals and someone at the college?

A No, the parameters are established by--in negotiation between the faculty and the administration.

The faculty scale is established between the Faculty Welfare Committee and the administratinn.

HEARING OFFICER: Who decides what to pay a particular part-time individual?

THE WITNESS: Youmean within the parameters?

HEARING OFFICER: Yes.

THE WITNESS: Not the parameters themselves.

HEARING OFFICER: No, within the parameters.

THE WITNESS: Oh, this is a determination that is made between the--you know, it is negotiated, so to speak, when the individual who is to be hired, has to be submitted for approval because in the same way that anybody else who is added to the payroll has to be submitted for approval to the office of the president.

My recommendation is determined by the--my own evaluation and the evaluation of the department chairman as to the quality of the person involved, whether the demand made by the person is commensurate is what we think we can get from him and if we agree on these figures then I try to get the approval of the university for this salary for this part-time person.

HEARING OFFICER: What I was sort of getting at is, there is ntohing written on paper that says an employee with a bachelor's degree receives X amount of money and an employee with a master's degree receives a certain--

THE WITNESS: Yes, those are the parameters.

MR. SHECTMAN: Mr. Hearing Officer?

HEARING OFFICER: Again we are within parameters and within those parameters a person with a master's degree may receive more than another person with a master's degree in a different subject base?

THE WITNESS: Yes.

HEARING OFFICER: On your evaluatinn of the employee?

THE WITNESS: Our evaluation of the worth of that employee to the college; yes.

MR. SHECTMAN: Mr. Hearing Officer, possibly, to clarify this point of information, Employer's Exhibit 65 in the prior hearings is the schedule--salary schedules for the faculty of Stern College.

MR. KRAMER: For 1973, 1974.

MR. SHECTMAN: Solely with reference to full-time faculty.

MR. KRAMER: That is quite correct, sir.

HEARING OFFICER: All right. I am [illegible] questioning that. I am trying to get at a point where part-time faculty negotiate their salaries on an individual basis with you.

THE WITNESS: On initial appointment?

HEARING OFFICER: Right.

THE WITNESS: Yes.

HEARING OFFICER: Is that true of full-time faculty also?

THE WITNESS: Yes.

HEARING OFFICER: They also--

THE WITNESS: Any initial appointment is determined--once the decision is that we agree to recommend to the university this person, and that the person should be brought in at this level, in other words, whether it is a full-time or not, if this person, let us say, within a full-time appointment, of course, we give him the rank; let's say that we want to bring someone in who is a full professor, then the negotiation takes place with the individual within the steps of the established salary scale for a full professor, even though we don't give him that rank, there is a predetermined range that wehave of what we can offer and that is--that exists, and then we--we deal with the individual.

Once the individual is put on payroll and then if that appointment is continued into the next academic year, then there is no individual bargaining any more.

It then--the full-time person goes up the scale in accordance with whatever his predetermined is and the part-time person will get whatever allowance is agreed on for part-time people, and that becomes fairly uniform.

HEARING OFFICER: Thank you.

Mr. Kramer?

MR. KRAMER: Yes.

BY MR. KRAMER:

Q Approximately how many of your full-time faculty members do not have tenure?

A About sixty percent don't have tenure.

Q Now, are you familiar with the University's revised tenure regulations which are part of the faculty hand book?

A Yes.

Q And that hand book is in evidence as Exhibit 51; is that correct?

A Yes, I am familiar with the hand book.

Q And--

MR. KRAMER: For the record, it is in evidence as Exhibit 51 to Board Exhibit 2.

BY MR. KRAMER:

Q Under-- In the revised tenure policy, may a full-time faculty member not be tenure eligible?

A Yes.

Q Would you explain how that comes to past?

A Yes. The-- Under the University tenure policy, tenure is granted only to people who hold the rank of assistan t professor, associate professor or professor.

Members of the faculty who even if they are full-time members of the faculty or hold any other title, such as visiting or research or adjunct ot whatever else it may be, are not eligible for tenure.

In other words service within those ranks do4s not accrue towards credit towards tenure.

Q So that there are people who will be working full time all their time at the University, full time at the University, who are not tenure eligible?

A Correct. Yes.

Q Are part-time faculty tenure eligible?

A No, they are not.

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HEARING OFFICER: Does a graduate assistants have any ranging within the university in terms of professor, assistant professor, associate professor?

THE WITNESS: At Stern College he is ranged as a lecturer.

HEARING OFFICER: As a lecturer?

THE WITNESS: That is the designation we give anybody who teaches part-time at Stern College.

HEARING OFFICER: And it is my opinion from the petition that lecturers would be excluded from the university?

MR. SHECTMAN: That's correct.

HEARING OFFICER: And does the Employer wish to take a position of lecturers?

MR. KRAMER: Not at this time.

MR. SHECTMAN: Lecturers are generally part-time in fact.

HEARING OFFICER: Are there any full-time lecturers?

THE WITNESS: Not at Stern College, no.

Q (By Mr. Shectman) Dean Mirsky, on Employer's Exhibit 101 on the top of page two of that exhibit you list a Michael Hecht as a visiting assistant professor and in that exhibit classify him as a member of the part-time faculty?

A Correct.

HEARING OFFICER: Yes, I understand.

MR. KRAMER: We would consider those people to be full-time.

Anyone who is given a full-time university appointment have a honorific I know of none at this point, there is no evidence other than counsel's comments at this point to that affect but if someone were given a full-time unversity appointment on a non on risk basis, not on the basis Dr. Fishman testified about we would assume that he would be included.

HEARING OFFICER: Right.

MR. KRAMER: Within the term full-time but where you can aggregate part-time or add teaching in one school and in another almost on an ad-hoc basis in -- that comes out to 12 hours as a -- as a full-timer we don't think so.

MR. SHECTMAN: Nor does Petitioner.

MR. KRAMER: And that's what Board will have to determine and we haven't listed these people on this exhibit that way.

We have listed on Exhibit 101 and 102, e, four, five, six, seven, eight people who have part-time affiliations at the school other that Stern University at our university.

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HEARING OFFICER: I think Mr. Shectman attempted to answer that before we got off the subject.

Mr. Shectman would you state it, please?

MR. SHECTMAN: It is the intents of this--of the petitioner herein to define full-time faculty as those who do have full-time faculty at those -- as those who do have full-time appointments to the university and have the benefits and prerequisites of full-time employees--

HEARING OFFICER: So you would exclude someone who carries 12 credits contact hours per semester without a full-time appointment?

MR. SHECTMAN: That is who-- That's correct, who--who is paid and treated for other purposes which we will develop in this hearing as a part-time employee.

HEARING OFFICER: Fine. Thank you.

Go ahead with your questioning.

[illegible]: A question you asked before, somebody who has been--who has six contact hours at Stern and six contact hours at Yeshiva College, you consider him as included or excluded?

MR. SHECTMAN: Again he would be included if he, one, had a full time appointment, or two, and this is an or, served as a member of the faculty with all--with pay, salary and other prerequisites appropriate to full-timers.

MR. KRAMER: I don't think that we are apart, except in the rhetoric on this subject.

HEARING OFFICER: It would appear to be that way.

MR. KRAMER: We believe a person who does not have a full - time appointment to be part-time, whether he teaches--three hours or say six hours at Stern College and you--and six hours at Yeshiva College, whether that person that we believe to be part time and have classified in our exhibit as part time, so there can be no confusinn about that, should be included or excluded from unit, dependint -- depends on whether that person bears a sufficient community of interest with the full-time employees.

HEARING OFFICER: Right.

MR. KRAMER: To be included,and on that we take no position.

HEARING OFFICER: Okay.

MR. SHECTMAN: I don't want to buy the characterization of counsel as to their part time, but we would agree in fact that we have listed them as part-time.

HEARING OFFICER: Fine. Let us get on with the questioning of the witness.

BY MR. SHECTMAN:

Q Dean Mirsky, Employer's Exhibit 104 is the constitution of Stern College Senate and Article 2 lists the qualifications for membership, including six faculty representatives.

Are any of those faculty representatives part time faculty?

HEARING OFFICER: What exhibit is this? 105?

MR. SHECTMAN: 104.

HEARING OFFICER: 104?

MR. SHECTMAN: Yes.

A These-- The faculty representatives on the Senate are elected on a rotating basis in accord with the stipulation in the constitution.

On the list that I have before me in Employer's Exhibit 105 there are the six members of the faculty who are listed as representing the faculty on the senate this year and looking through those I would say that none of those listed are part-time people.

There is no stipulation, as I see it,

in the constitution that says that a part-time member cannot be elected by the faculty toserve.

Q On Employer's Exhibit 105, there are two faculty members who are part-time listed with membership on the committees listed on that exhibit.

Each one of those faculty members is listed on Employer's Exhibit 101 as having an affiliation with an outside institution.

Could you explain in more detail what is meant by that?

A What is meant by what?

Q An affiliation with an outside institution. I think listed is Baruch College, Fairleigh Dickinson, et cetera.

A Yes.

What I have listed there is those people who are teaching part time at Stern College who, to my knowledge becuase they have so informed me or because we have it in the record, hold appointments at s ome other institution and so Dr. Samuel Bernstein whose name appears on Employer's Exhibit 101 is a full--h olds a full-time appointment at the Bernard Baruch College of the City University of New York and teaches part-time at Stern College.

Q Is it possible that there are other part-time faculty members who may not have informed you with affiliations with outside institutinns?

MR. KRAMER: I must object to these questions.

The witness has testified that, to his knowledge, these are the--these are the only ones.

I think implicit in it wasn't he--was he nominally present, omissions about these matters.

Is it possible? Anything is possible.

HEARING OFFICER: Sustained.

BY MR. SHECTMAN:

Q When a part-time faculty member is hired, it required that he indicate to you or to any other university officials whether he has a full--an affiliation with an outside institution?

A At the time of initial interview, yes. We ask the faculty--the potential faculty member, the applicant, to give us a CV, a curriculum -- a resume of his activities, background and so on and so forth, which we expect him to list these things and so we have that information at the time of appointment.

If he remains a part-time faculty member at the college and should make changes in his affiliations, other than that, we presume and expect that he will inform us of this as a matter of courtesy.

But there is no requirement that he do so.

Q I see. All right.

Are there not limitations on outside employment for full-time faculty at the university?

A Yes, there are, as stated in the faculty hand book.

Q And that pertains, does it not, to all full-time faculty?

A To full-time faculty employees of the university. Which my definition means that they are giving their full time as services to Yeshiva University.

Q Do you take part in the formulation of a budget for Stern College?

A Y3s.

Q Is that done on an annual basis?

A Yes.

Q Included on that budget is there any provision for the income pursuant to student enrollment, Dean?

A I don't understand your question.

Q Does the budget list--make any listings or provisions for the income by tuition that Stern College would generate to the university?

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Q Has there been any time since you have been dean at Stern College where there has been a decision to expand the enrollment of the college?

A That had been the standing directive under which I have worked as a dean.

Q And where is that directive-- Where does that directive come from?

A That directive has come from the University and the discussions that have emerged in the various--in faculty meetings.

Q From whom has it come in the University?

A As all things come to me from the office of the president through the vice president for academic affairs.

HEARING OFFICER: Mr. Shectman, have we reached the point in your cross-examination where we could safely break for lunch without breaking your train of thought?

MR. SHECTMAN: Certainly.

Why don't we break until 1:30 then?

(Whereupon, at 12:30 p.m., the hearing recessed, to reconvene at 1:30 o'clock p.m., the same day.)

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recourse to the president or the academic vice president if we had to adjudicate the matter.

Q Now, on the committee on promotions, you indicated that was an elected committee.

A Yes, those members are elected by the faculty.

Q And which faculty members would be entitled to vote in that election?

A All faculty members who are empowered to vote under the faculty documents, which would be full-time members of the faculty and part-time members of the faculty, whoever taught for three consecutive years and have taught three hours or more, as stated in the document.

Q Now, you indicated that the department chairman at Stern College are appointed by yourself.

A Yes, technically they -- certainly upon my recommendation, which has to be approved by the office of the president -- the president or the academic vice president.

Q Do you know if department chairmen at other schools of the university are elected by faculty?

A I can only at best tell you what I believe I know by my chance knowledge. I have no real documented knowledge of that.

MR. KRAMER: Mr. Hearing Officer, it is our intention -- at least our present intention -- to put on witnesses to cover the schools of this university who have

10 department on decisions -- on hiring decisions?

A No, I did not.

What I reported is what I have and based on my knowledge and experience with them.

Q The matter you referred to that was brought to the faculty review committee involved the retention of a Dr. Carol Gruber, did it not?

A Yes.

Q And it was the position of the department chairman, was it not, that Dr. Gruber be maintained?

A Be retained, yes.

Q And it was your position, was it not, that she not be retained?

A Correct.

Q Was Dr. Gruber retained?

A No, she was not.

Q In fact, did the university faculty review committee have any authority whatsoever to bring about her return to the teaching post?

A The university review committee in its report, which I saw a copy of, stated that, as to the matter of the individual involved, Dr. Gruber, since she was a non-tenure person, retention or not did not constitute a grievance that would fall under its jurisdiction; but what did remain in its jurisdiction was the question as to whether or not I had infringed improperly on the rights of the departmental chairman. And they addressed themselves in their report to that point.

Q And do you know how many grievances have been brought before the university review committee in the last three years?

A I do not recall the total number, but the university review committee reports regularly.

MR. KRAMER: I think there is testimony in the record, Board Exhibit 2, on the number of grievances that have been brought. Whether it's been in the last three years or not I frankly don't recall.

The number, I believe, was four that was testified to by previous witnesses.

Q The conclusions of the university review committee in the Gruber case -- and that is contained within Employer's Exhibit 109 -- states that it is the president in whom ultimate responsibility rests; he alone makes the crucial decision in the final analysis --

Change the order of that sentence. I will read it as quoted --

MR. KRAMER: I must object to reading sentences from the document.

MR. SHECTMAN: I am not reading.

MR. KRAMER: The document speaks for itself. It should be read in context.

I purposely refrained from not reading from this document.

Q With regard to this document, and in reference to the president's ultimate responsibility, I refer your attention to page 4 of Employer's Exhibit 109.

Is it not the case, Dean Mirsky, with regard to non-tenure faculty, for instance, that your role or the role of the department chairman or the role of anyone else in the university would only be advisory with regard to the ultimate decision of the president?

A You are asking me to express my understanding of what the structure of the university is.

As I understand it -- and I may be wrong on this -- the president is the chief executive officer of the university working under the mandate given him by the board of trustees. As such, he exercises the right, or basic decisions, ultimate decisions.

In the case at hand, I did submit my recommendation, and Dr. Goldstein submitted her recommendation to the president.

The president supported my position.

Yet the avenue of appeal was open to Dr. Goldstein. She did go to the grievance committee or the university faculty review committee, which did review the case and their opinions and evaluations about courses.

Q By these questionnaires they would be soliciting information?

A Yes.

That's a written document. You asked whether they talked to students. I presume they do, but --

Q Would they also on occasion solicit information about the performance of a faculty member from other faculty members?

A Presumably they might.

Q Now, with regard to the policy on tenure and the department chairman there, do you know if department chairmen consult with other faculty members or other members of the department as to their recommendations to you as to the eligibility or tenured status of any faculty members?

A I don't know what practice they use.

The only way I would know if if someone told me that that had been done, but that's the only way I might know.

Q And is it you who submits a recommendation to the office of the president for granting tenure to a faculty member?

A I submit the total record. In other words, I submit all of the documentation to the office of the president.

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That documentation would include whatever recommendations I would have from the departmental chairmen, whatever else would exist -- I have, information that would be necessary or that would be requested of me.

Q What kind of information --

A And I may or may not add my own personal recommendation.

Q What kind of information would conceivably be forwarded to the president's office or vice president for academic affairs?

A Length of service, activity within the college, lists of publications, recognitions that might have been given in the academic community, service to the university other than through the college; anything that would help.

Q Is it your normal practice not to make a recommendation as to tenure?

A Generally speaking, as I indicated, I do make a recommendation.

And in most instances, if not in all, I have gone with the recommendation given to me by the department.

Q Have you gone with the recommendations given to you by the department in all cases?

MR. KRAMER: I must object.

There is no testimony that he went with any recommendation by any department.

THE WITNESS: By the chairman.

MR. KRAMER: But by the chairman.

MR. SHECTMAN: Excuse me, but would you read back his last answer?

MR. KRAMER: That's the way I heard it.

MR. SHECTMAN: Read back the witness' last answer.

(Portion of record read by the reporter.)

MR. SHECTMAN: Thank you.

THE WITNESS: I may correct that --

MR. SHECTMAN: May I have --

THE WITNESS: -- that recommendation comes to me from the chairman --

HEARING OFFICER: Wait.

Read the next question, and then we will get the clarification.

MR. KRAMER: Mr. Hearing Officer, if the witness has a correction or a clarification, need he really wait until redirect?

MR. SHECTMAN: Do you?

HEARING OFFICER: Do you realize what the problem is?

THE WITNESS: Yes.

My presumption was that we would -- it was perhaps an oversight on my part since we were talking in context, and I said these recommendations come to me from the chairman. I solicit them from the chairman in his capacity as chairman.

I do not ask him how he arrived at this recommendation, nor do I know, nor do I particularly judge his recommendation as to he has consulted with others or not.

When I said "sent from the department," in my context that meant the recommendation given to me by the chairman in the department.

Q Dean Mirsky, in this very important question of faculty members' tenure at Yeshiva University, have you on occasion consulted with faculty members whether or not department chairmen?

A On whether or not to grant tenure to an individual?

Q Or the merits of making that recommendation.

A I do not believe I have ever done that.

Q The only person you will talk to, or the only member -- the only member of the faculty to whom you will talk on which to base your recommendation for or against tenure will be the department chairman?

A Stern College faculty, yes.

Q Have there been any occasions where you have recommended against the recommendation of a department chairman?

A There might be one such instance.

In this case it happened to be a departmental chairman who was up for tenure and recommended himself for tenure, and I did not.

Q And that is the only instance that you recall?

A Yes.

And he was granted tenure. He is a tenured member of the faculty today.

Q And have there been occasions where the vice president for academic affairs or the president of the university has not complied with your recommendation and the recommendation of the department chairman?

A I cannot recall any such instance in the past.

Q Was there --

A With the exception of the one I mentioned before, where the president granted tenure when I recommended not to.

Q Was there at one time a freeze on the granting of tenure at Stern College?

A To the best of my knowledge, there was never a freeze on the granting of tenure.

Q You indicated that there was a committee on promotions, did you not?

A Yes.

Q Are there any department chairmen on that committee?

A Let me look at the list.

Q I see there is an asterisk next to your name.

That does not indicate you are a department chairman?

A No. I am chairman of the committee.

24/c

Q I see.

A On that committee Dr. Appel is a departmental chairman. Dr. Eidelberg is a departmental chairman. Dr. Friedland is a departmental chairman.

Q The remainder are not, then?

A The remainder are not.

Again, of course, these were people elected by the faculty as faculty members.

Q Now, I believe in your testimony this morning you testified as to the activities and purpose of all of these committees, and I don't recall such testimony with regard to the faculty welfare committee.

Would you tell us what their purpose and activities are?

A The faculty welfare committee concerns itself with matters affecting the welfare of the faculty.

Q Would that include their salaries?

A Yes, certainly.

Q And, as a product of their activities --

MR. SHECTMAN: Can we go off the record?

HEARING OFFICER: Off the record.

(Discussion off the record.)

HEARING OFFICER: Back on the record.

Q (By Mr. Shectman) I show you Employer's Exhibit 80-A from the prior proceeding entitled "Faculty Salaries" with

25/mp

indication of Yeshiva College and Stern College under salary steps proposed for the faculty, years, and rank, and then the categories of -- of the faculty.

Was this -- Were these salary ranges worked out with the faculty welfare committee?

A Yes, without checking each figure, but looking at the general thing, this seems to be the faculty scale worked out.

Q And are the faculty employed at Stern College employed pursuant to such a schedule as is or as amended?

A Yes, the full-time faculty are.

Q And are departmental chairmen paid according to such a schedule?

A Yes, they are.

Q Is the dean of Stern College paid according to this schedule?

A No, he is not.

Q Are the part-time faculty of Stern College paid according to this schedule?

A No.

As I mentioned earlier, they have a different range of salaries.

Q The salaries listed here, I assume, are per annum salaries?

A Yes. They are for the academic year.

Q Is it then true that, prior to this academic year, the salaries for full-time faculty at Stern College varied between $14,000 and -- excuse me -- varied between $7,000 and $19,500?

A On the -- well, first on -- that was the scale that was in effect with one modification. I would say those are not the actual salaries, because, to the best of my recollection, there was no one earning less than $8,500.

The scale was, say, 7,000, of which was the beginning scale, but there was an increase granted by the university on a percentage basis of the salaries.

And so people who were at the maximum at any level were earning some -- above the printed maximum of that scale.

MR. SHECTMAN: Off the record.

(Discussion off the record.)

HEARING OFFICER: Let's go back on the record.

Q (By Mr. Shectman) Do you have a written salary range for your part-time faculty?

A Yes, I have general ranges.

Q And they have been formalized into some document?

A They were submitted to me by Dean Frimmer, who is my predecessor in the office of the dean, saying that these are the -- these were the ranges that were given to him. And I have gone along with those ranges since.

27/cp

Q When did Dean Frimmer give you those ranges?

A In the spring of '68, I presume, when I was getting ready to go into the office.

Q And those ranges remain in effect?

A No. In -- Well, generally those are the ranges that remain in effect, but in the year -- I believe it was -- I don't recall -- '69, '70 or '70-'71, on appeal, the university granted the part-time faculty at Stern College an increase of ten percent, of course for each part-time faculty member, so that was agreed.

Q So was that the last increase that the faculty was given?

A Part-time faculty, yes.

Q When was the last increase that was given to the full-time faculty?

A The full-time faculty, as I indicated, works according to the scale. So, except for one year when there was a freeze on increments, all faculty members went according to the scale.

And then, when the university made its adjustment for those who were at maximum, that was taking them above the scale.

Q So then --

A There is a -- there was negotiation for the current scale, and this is the scale up until the current year.

28/cp

Q Were there --

A In the negotiations, faculty welfare committee presented to the university a request for revision of the scale for full-time people and an adjustment in the scale for part-time people.

Q Now, in the year 1972-1973, for the academic year, someone working in '71 and '72 would receive an increase according to this exhibit in '72-'73, would he not?

A Yes, that would be normal procedure.

Q Would a part-time faculty member receive any such automatic increase in the years '72-'73?

A No.

I indicated this was worked out with the welfare committees. And, since that did not contain automatic increments, no automatic increments were given.

So, whatever agreement -- I was not dean at the time that this salary schedule that you have was agreed to, so I don't know the details of it, but whatever was agreed to is what had been implemented.

Q Are there full-time faculty members at Stern College who do not have 12 contact hours?

A Yes.

Q They, I assume, have some contact hours that are -- they have some contact hours, and then the equivalent -- then it's equivalents as defined by you?

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A Me or by the university, yes.

As I indicated, departmental chairman, for example, have a remission of one quarter of their workload.

Q Are there any other faculty at Stern College who have such a remission or such equivalent status?

MR. KRAMER: If you understand the question.

Q Do you understand the question?

A Are you asking whether anybody else gets a remission --

Q Yes.

A -- for these duties?

Q Yes.

A The only people who get these remission -- this kind of remission are departmental chairmen.

Q Are there any other faculty on the Stern -- at Stern College other than departmental chairmen who do not have 12 contact hours?

A Who do not --

Q Full-time.

A -- have 12 contact hours or their equivalent?

Q No.

Let me ask you again.

Putting aside departmental chairmen, are there any other full-time faculty at Stern College who do not have 12 contact hours?

A Yes.

30/cp

Q Could you describe some of them?

A Offhand I can think of two.

Q Could you tell us about that?

A One is a departmental chairman.

Q Putting aside departmental chairmen.

A Yes, there is a departmental chairman who has a further remission of -- on the workload because, upon appointment, the letter appointment indicated that she was to carry other responsibilities which had to do primarily with the teacher preparation program, coordination, supervision of our tuition -- of our teacher certification program, and therefore consideration was to be given for those duties and towards a reduction of the number of contact or classroom hours that she would be teaching. That would be an equivalent.

And there is another faculty member who was granted a remission of some contact or teaching hours to permit research and publication -- completion of research leading to publication of a book.

Q Now, could you tell us the basis on which part-time faculty are paid?

And, more specifically, I mean in terms of their relative part-time workload.

Do you understand the question?

A No, I don't.

31/cp

Q For instance, I would assume a distinction would be made between the pay of someone teaching or -- excuse me -- of someone with three contact hours and someone with six contact hours.

A Yes, given also changes that would come because of previous training preparation, recognition in the field, achievement, and so on, certain part-time people would be paid at a higher rate than certain other part-time people, just as certain full-time people are paid at higher rates than other full-time people.

Q Once a part-time faculty member is hired and the salary is fixed, on the schedule for payment to part-time faculty to which you referred, is there a distinction made, contact hours that a part-time faculty member would have?

A Yes. If we add to the teaching load of a part-time person, we add to the compensation.

Q Is it in a direct portion?

In other words, would a part-time faculty member teaching one semester three -- Would a part-time faculty member having three contact hours one semester and second semester having six contact hours have his or her salary doubled?

A Yes.

Q And, if in the next semester that faculty member were teaching nine contact hours, would the -- would that

32/cp

person's salary be increased an additional 50 percent?

A Well, if you don't catch me on percentage, because I can't follow you.

But the comparative increase would be in direct relation to the number of teaching hours that the faculty members asked to undertake.

Q Are there any part-time faculty whose salaries are fixed on a base other than contact hours?

A No, because we --

There is one category of instructor, again in a specialized program, that I can think of -- that's the teachers' certification program -- where work is done not in a classroom in teaching or lecturing to students but observing students out in the field. And there is a formula by which this is translated into the equivalents of course hours taught, and the faculty members therefore are paid on a comparable basis if they are on a part-time situation in that regard.

But they are not actually sitting in a classroom at Stern College lecturing to students. Or, they may not be.

I understand that part of their program so as to meet with students, but I don't know how it works.

Q Are there any part-time faculty that are credited for time salary or for the purposes of salary rate for

33/cp

administrative duties?

A No.

Q Do you have a recollection of what the salary scales are for part-time faculty?

A I would say they would range roughly from about a low -- I can recall, on a year basis -- in other words, the low that I can remember for part-time faculty person is teaching one course earning $1,000 for the year, and --

Q Excuse me.

One course would be how much contact?

A Each semester, three contact hours.

Q One course is three contact hours?

A Not necessarily, no.

Q Please continue.

Q A three-credit course carries three credits, or a two-credit course would carry less. A four-credit course would carry more.

And we -- we have a high of faculty member, part-time faculty member teaching three courses who is earning $7,000.

Q And those three courses would constitute?

A Nine contact hours.

Q Nine contact hours?

A Yes.

Q All right.

And are there -- I assume there are intermediate

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I move that the Hearing Officer request production from the university of the data of the current and effective salary rates for part-time faculty at Stern College in each of the ranks in which they may serve or be assigned.

HEARING OFFICER: I am going to deny the motion.

I feel that the route open to counsel for Petitioner would be through subpoena, and that, if you do seek information you feel is relevant, this information can be subpoenaed, and I will leave that open to you.

Q (By Mr. Shectman) Do full-time faculty at Yeshiva University participate -- excuse me.

Do full-time faculty at Stern College participate in a pension fund?

A Yes, that option is open to them.

Q Do part-time faculty participate in a pension fund at Stern College?

A As I understand it, that option does not exist for part-time members of the faculty.

Q Do full-time faculty at Stern College benefit from any health and disability insurance program?

A Such programs exist at the university.

Q And do full-time faculty at Stern College benefit from those programs?

A Yes, those who choose to may enter the programs.

Q Do part-time faculty at Stern College benefit from

41/cp

those programs?

A Again, to the best of my understanding, those programs are not available for part-time.

Q If a part-time faculty member at Stern College seeks to be employed elsewhere, does he need permission from you or any other administration official at the university?

A Did he find employment -- you mean outside of Yeshiva University?

Q That is correct.

A No.

Q Is such permission required for the full-time faculty members at Stern College?

A Yes.

By definition of full-time member at the university, should be devoting full time to the university.

Q Can you tell us, in terms of the number of hours, what full-time work means, full-time status means at Stern College during the school year? Per week, let us say.

MR. KRAMER: I don't know what you mean by --

Q Let me clarify the question if there is some confusion.

Can you approximate to us the number of hours of work in connection with a faculty member's position required each week?

MR. KRAMER: Mr. Hearing Officer --

contact hours, and what are contact hours for defining full-time status, as well as he says being a member of the faculty and the fact in teaching and having taught at the university, that I think there is a very good basis for him to give us some picture of what the word would mean.

MR. KRAMER: Mr. Hearing Officer, just -- several small comments I have to make.

First, there is no showing that welfare committee discussed how many hours of work, as opposed to contact hours, a professor spends on campus.

HEARING OFFICER: Wait.

I am going to overrule the objection.

But I will ask for counsel for the Petitioner to herpas clarify the question. And, even before Mr. Shectman gets to that, I would like to ask Dean Mirsky a question.

When we talk about a full-time faculty member carrying a full load, a full load, as I understood it, was twelve contact hours per week per semester.

THE WITNESS: Correct.

HEARING OFFICER: So that he is in contact with the students in class or equivalent positions twelve hours per week?

THE WITNESS: Right.

HEARING OFFICER: Is that the maximum, minimum, or

4[illegible]/cp

the number, period, twelve hours?

Could a full-time faculty member put in 14 hours or 15 hours of contact with the students?

THE WITNESS: Yes. There are faculty members who do that, and they are -- they have a right to additional compensation for those additional hours of contact with the students.

HEARING OFFICER: Okay.

If you could perhaps clarify what you mean by work during the week, perhaps we could get the answer.

MR. SHECTMAN: Maybe we can clarify it this way.

Q (By Mr. Shectman) You indicated that there was a faculty member who received a remission of the contact hour obligation for doing research, did you not?

A Yes.

Q What was the extent of that remission?

In other words, how many contact hours does that faculty member now have?

A Nine.

Q Did you in any way attribute the number of hours that would be required for that faculty member per week on the research project for which he got the remission?

A No, I did no arithmetic computation.

I made a recommendation that, in view of what I felt would be the value to the college, possibly to the uni-

47/cp

THE WITNESS: Well, I will try to give you some -- it's obviously a personal view, although this is something that has been discussed within the academic community for -- for many, many years.

I have heard an extreme position given by one vice president for academic affairs who felt that virtually every waking hour of a faculty member ought to be and, in a sense, is devoted full time to his improvement as an instructor and, oh, to familiarize himself with the -- with the subject that he is teaching and all other related subjects.

On the average, I think it is expected that, in addition to the hours that a faculty member invests in actually meeting with students in the classroom and as advisor to students and general contact, and in certain more easily quantified activities such as grading examinations and grading papers, making up -- reading lists, advising syllabi, and participating in faculty departmental meetings and faculty meetings in university functions, and so on, that he should be spending a good deal of his time in reading, in carrying on research, in professional activities, perhaps participation in professional associations, in his own writing, and things of that sort, and so the range -- it is felt that -- it's extremely difficult to talk about whether a faculty

48/cp

member can be said as putting in a 40-hour week or a 48-hour week, or anything of that sort, that this obviously will vary with the conscientiousness and the range of the faculty member's interest, and what he thinks is germane to him.

But, generally, if we give a faculty member a full-time appointment, it is felt that he should be available for all of the more normal aspects, as I indicated, classroom, advisement, participation in meetings, and so on, and, in addition to that, try to make sure that he has enough time left to keep himself abreast of what is going on in his field and related fields by grade hours.

And it is for this reason too that, when we have what are called interest sessions or vacations, while presumably faculty members can rest up by fishing and playing golf, they're also expected to be on the job by reading, broadening their fields and so on, and research.

It's an extremely difficult thing for me to express.

I would say, on the basis of my own experience, there have been times when I have probably put in a work week, between reading and preparing for courses, and trying to keep ahead of my students, which is not always easy, by putting in 60 and 70 hours a week; and sometimes by doing significantly less.

It's just that kind of involvement with the faculty

50/cp

ticipation in the more formal aspects of the campus life or the academic community which they happen to work.

So that part-time members would not probably be asked as strongly to participate in faculty committee work or to be necessarily present at college-wide or university functions and things of that sort, something that would be more expected and sometimes demanded if it's not for the coming of a full-time faculty member.

HEARING OFFICER: Fine. That was the next question.

Go ahead, Mr. Shectman.

MR. SHECTMAN: If you can get back to your original question.

HEARING OFFICER: Yes, I think that the answer was erudite and responsive.

Q (By Mr. Shectman) You indicated that, with regard to tenure, there may be certain full-time faculty who may not be eligible for tenure or on the tenure track, so to speak, did you not?

A Under the university policy there's certain titles which do not accrue credit toward tenure.

Q How many full-time faculty at Stern College are currently employed who are not on the tenure track?

A At the moment we have none.

Q Are any part-time employees -- excuse me -- any part-time faculty at Stern College on the tenure track?

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A Part-time faculty members?

Q Yes.

A By definition of the university policy, they cannot be.

Q Employer's Exhibit 107, your note to Professor Dan Vogel, you indicated that, and I quote:

"I do not have to reiterate my own feelings that wherever possible we would like to maintain a full-time faculty."

A I don't have it in front of me, but I am very likely to have said it.

HEARING OFFICER: Here (handing).

THE WITNESS: Thank you.

Q It's in the middle of the second paragraph.

A Yes.

Q Could you tell us the basis of your feelings in that regard?

HEARING OFFICER: The basis of?

MR. SHECTMAN: Your feelings in that regard.

A Yes.

As I indicated, when the university extends a full-time appointment to an individual, it does feel that it has the right to demand more direct involvement of that individual than it might have for a part-time faculty member.

And, therefore, to the extent that we can afford to

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have as many full-time people on the faculty concerned for the welfare of the students and the college, it is to -- be used to the benefit of our educational enterprise.

And, therefore, it is our hope to have as many full-time people as we can.

This has nothing -- I mean -- I don't want to suggest that this has anything against the quality of the people who are teaching on a part-time basis at the college. They may be of excellent quality. But, by the virtue of their part-time employment, the college and university has less of a claim on their time.

And, for that reason, we feel that it's preferred to have full-time faculty devoting their full time, energies, and abilities to the instruction at the college and to the other educational activities we carry on.

Q In hiring full-time faculty, do you have discretion in what ranks to hire for full-time faculty?

A Well, if you mean by "discretion" can I by myself make a final decision on this --

Q That's not what I mean.

I mean now, in terms of putting aside the process which you have already explored, when a full-time member is hired, or a full-time faculty member is hired at Stern College, can he be hired in any of the professorial ranks?

A Yes, that's a decision that's made.

In other words, when I discuss with a departmental chairman the question of new faculty, if it is felt that the needs of the department are such that we need a senior person, which means someone with more years of experience, perhaps higher levels of training, perhaps greater publications or research or greater recognition in the field, we discuss also the implications of that, because the higher, or the more senior member of the faculty, at the higher rank, which will reduce the budgetary -- budgetary flexibility that will exist within the department and, consequently, within the college for further appointments.

And so we weigh whether it would be better to have, let's say, a full-time full professor at this point to serve our needs or rather two instructors, for whom we can for the same we could get one, and what our needs, and how long it would best serve that.

When we agree on this, we can then recommend and request that the appointment be made at any rank.

In other words, there is nothing that prevents a person from coming in at an advanced rank. Not everybody must begin in the instructor's level.

Q In making that recommendation to, I assume, the office of the president or the vice president for academic affairs --

A Correct.

54/cp

Q -- would you provide the basis of that recommendation?

What I mean by that is the -- we're talking about someone who would get an appointment higher than that of instructor.

A Yes.

Q Would you provide information as to the person's background and qualifications and why?

A Yes.

Q You would recommend a higher appointment?

A We do that on two -- two levels:

One is the level of the individual. In other words, if we are asking for someone to be brought in with a given professorial rank, we would try to justify that by giving his credentials, showing that he is worth they have this kind of rank. And then we would try to justify that on the basis of the needs of the department and the college, as department chairman, and I have worked that out.

Q You would justify that to whom?

A We go to the office of the president through the academic vice president.

And that may sometimes, of course, lead to some kind of discussion, although this is very rare, with the vice president for business affairs, since this is largely an academic and not a business decision.

HEARING OFFICER: Point of clarification.

55/cp

The vice president for business affairs, is he the vice president for financial affairs?

THE WITNESS: Financial affairs.

HEARING OFFICER: Same person?

THE WITNESS: My mistake. He carries that title at the university. I stand corrected.

HEARING OFFICER: All right.

Q (By Mr. Shectman) In hiring part-time faculty, what options do you have there in terms of ranks to which they might be hired or at which they would be hired?

A The -- Since the practice at Stern College is that we give a person who comes in either the rank of lecturer, the title of lecturer, or we give him whatever rank he enjoys at another institution with a prefix to it, visiting, or something else, this is one of the factors that comes in.

But, primarily, since this is a part-time appointment, the statement that so-and-so has been granted and carries the rank, let's say, full professor at Brooklyn College or some other -- is taken sufficient, you know, study of credentials, we don't have to go through the same kind of situation as we would with someone to whom we are granting our own rank and verified statement of that as accepted.

And then we discuss the needs for that kind of person and the implications of the cost of that kind of person, of course.

HEARING OFFICER: We will take a five-minute recess.

MR. SHECTMAN: In two minutes, and I will be done.

HEARING OFFICER: Oh, okay.

MR. KRAMER: In five minutes I can be done.

HEARING OFFICER: Off the record.

(Discussion off the record.)

HEARING OFFICER: Back on the record.

Let's take a five-minute recess.

(Recess taken at 3:20 o'clock p.m.)

(Hearing reconvenes at 3:30 o'clock p.m.)

HEARING OFFICER: Back on the record.

MR. SHECTMAN: Mr. Chaiet, I have no further questions of this witness.

MR. KRAMER: I only have a few.

HEARING OFFICER: Go ahead.

REDIRECT EXAMINATION

Q (By Mr. Kramer) Dean Mirsky, do part-time faculty members at your school grade papers?

A Yes, they do.

Q Do they prepare reading lists for their courses?

A Yes, they do.

Q Assuming, of course, the course requires a reading list.

A Yes.

Q Do they prepare syllabi, or syllabus, for their course?

A Yes, they do.

Q And they are free to attend departmental meetings, are they not?

A Yes, they are.

Q And I think you testified,while you were in the English department, that at least on one occasion you observed part-timers attend.

A Yes, that I can recall, yes.

Q With respect to your faculty-student senate, actually with respect to the Stern College senate, it has people in it other than faculty and students, I take it?

A Yes.

Q With respect to that senate, have any part-time faculty members participated by election of the faculty in years prior to 1973-74 or 1974-75?

A Yes.

Q Would you tell us about that?

A If I can recall, there was a part-time faculty member by the name of Green who was elected by the faculty to serve on the faculty senate.

He served for, I believe, two years, which was a full term -- I am not sure about the length of his service; but, if I also recall, he served not only the senate but on the agenda committee of the senate.

Q Now, Dean Mirsky, could you give us a time fix on that? When did he serve, approximately?

A I believe he served in -- this is '74-'75 -- '72-'73. It was his last of service with us. He was on the senate then. He may have been there before.

Q Dean Mirsky, to clarify the record, have you received adverse recommendations with respect to termination and reappointment from the department chairmen?

A What do you mean, adverse?

Q Anything negative. They wanted cert[illegible]culty members, be they part-time or full-time,not appointed the following year.

A Yes.

Q Or terminated the following year.

A Terminated, yes.

Q Have you accepted those recommendations?

A Yes.

Q Have you also turned down some of those recommendations.

MR.SHECTMAN: Excuse me.

I would like to object to this line of questioning if it's going to continue.

I think -- I am very certain all of this was testified to this morning.

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MR. KRAMER: Well, there was certain questions two and three times on cross.

I will be through very quickly, Mr. Hearing Officer, in the time it takes to argue about these questions.

MR. SHECTMAN: If it will move quickly, no problem.

A Yes.

Q Have you also turned down recommendations for non-appointment or termination?

A No, I cannot recall an instance where a departmental chairman said he did not want a faculty member reappointed that I did not accept that.

Q How about where he wanted him reappointed?

HEARING OFFICER: I believe we have testimony --

A I believe -- I can't -- I can't recall an instance, except for the one that we discussed with Dr. Gruber.

MR. KRAMER: That's what I was getting to, Mr. Hearing Officer.

HEARING OFFICER: All right,

Q Is it a fact, then, Dean Mirsky, that the Gruber incident, which is reviewed in Employer's Exhibit 109, was the only situation in which you refused to accept the recommendation of the department chairman for the retention of one faculty member, retention of a faculty member?

A Yes, I believe that's true.

Q And the appeal that's reflected in Exhibit 109 stemmed

60/cp

from that; is that correct?

A Yes.

Q You consulted with that chairman, did you not?

A Which chairman?

Q The chairman -- Doris Goldstein.

A Yes.

Q Doris Goldstein?

A Yes. We discussed the matter.

Q But you did not accept her recommendation?

A No, I did not.

We discussed that a number of times too.

Q And she didn't have the authority on her own to effectuate the reappointment, is that correct?

A That is correct.

MR. KRAMER: I have no further questions at this -- just a minute.

Oh, yes, excuse me, I do have a couple of more things.

HEARING OFFICER: Go ahead.

Q (By Mr. Kramer) Dean Mirsky, during your five years as dean at Stern College , have full-time faculty members resigned?

A Yes, they have.

Q And is there a practice of giving notice with respect to such resignation?

A There is a statement in the faculty handbook that

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it is expected that a full-time person will give a -- I don't recall the exact date, but that -- that, if a full-time faculty member will inform the dean or the university sometime in the spring semester, the latest, of his intention not to return for the coming academic year.

Q What is the -- what is the practice in your school?

A The practice -- I don't know what you mean by "practice."

Q When do you actually receive these notifications or resignations?

A I have received such notice -- notices sometimes almost a full academic year in advance.

And there's been one instance where I received it almost on the day of the beginning of the new academic year.

Q In your experience, Dean Mirsky, have faculty members who resigned -- strike that.

Is it your normal expectation that a faculty member who in fact delivers a resignation to you this year, this academic year, will teach the following academic year?

A I am not quite sure I understand the question.

If the faculty member informs me that he has resigned, then I take it he will not be back.

Q And is that the reality?

A Yes.

62/cp

Q Now, you have faculty members currently on your staff who are probationary full-time faculty members, do you not?

A Yes, we -- in using the word "probationary" as it is used in the tenure statement.

Q Have there been -- are there among those probationary faculty members any who have been given notice that they will not be reappointed for the next school year, 1975-76?

A Yes, there are.

Q Would you tell us who they are, please, if it's common knowledge?

A By name?

Q If you would.

A Yes.

There is a Professor Betty Rosoff, Professor Carol Silver, and Dr. Bigdor Bittman.

Q Dean Mirsky, when was notice given to these faculty members?

A Dr. Carol Silver had notice of this sometime during the spring of '74. I don't recall the exact date.

Dr. Rosoff had notice of that somewhere about September of this year.

And Dr. Bittman had notice September of this year.

Q To your knowledge, are any of these three faculty members seeking employment elsewhere, or have they obtained

63/cp

employment elsewhere, if you know?

A I -- I do not know. I don't have any knowledge.

Q Is it usual, Dean Mirsky, when a probationary faculty member has been given notice of termination, let's say, either in 1973-74 or '74-'75 effective at the beginning of the 1975-76 school year, to have that type of faculty member teaching full-time in your school in that 1975-76 school year, based upon your past experience?

A No, but it may happen as --

Q But it would be the exception, would it not?

A It would be the exception.

Often is -- it may be in this instance when the termination is given because continuation of appointment might bring tenure, if tenure should be granted.

In other words, upon request the faculty member may ask to be -- that this be reconsidered, and, if the decision is to grant the appointment, which means to grant tenure, then that faculty member will be back.

Q That's the next point I was getting to.

Putting that aside --

A Yes?

Q -- would it be the usual practice to have the terminated faculty member back during the year in which he was not supposed to be?

A No, that would not be normal practice.

64/cp

Q In other words, he would get a job somewhere else?

A Yes.

Q Now, putting aside questions of tenure for the moment, does such a faculty member -- and you have named three of them -- putting aside the questions of tenure, do they have appeal with respect to their nonrenewal or termination?

A Yes, if they feel that they have a just grievance, that some improper action has been taken against them.

Q Where is that appeal taken?

A They can appeal within Stern College through the welfare committee or to the university review committee, the university faculty review committee, or, if they want to, on personal appeal, they can go over my head, so to speak, and appeal directly to the academic vice president and ask for reconsideration.

Q Putting aside questions of tenure, have Professors Rosoff, Silver, or Bittman filed such an appeal?

A No.

Q Now --

A Other than the request for consideration for tenure, which is another thing.

Q Now let's deal with the question of tenure.

A Yes.

Q If the termination was because a professor has been denied tenure there an appeal procedure there?

A Yes, there are two kinds of appeals in that such a faculty member may make.

One is a direct appeal as I indicated before perhaps to the faculty -- University Faculty Review Committee, that tenure ought to be granted and this then is in the nature of a grievance, appealing that some improper action has been taken against this faculty member or there can be a request that the elgibility of the person for tenure either be reveiwed generally or under the new tenure policy statement that the faculty member indicates that he or she is prepared to consider reappointment to one of those titles that would not accrue further credit towards tenure then they may appeal on that score and then that may or may not be granted.

Q All right.

With respect to the three faculty members you have testified about have any of them appealed on the grounds that == have any -- any of them -- strike that.

Have any of the three faculty members you referred to been terminated because they are not going to be granted tenure?

A Yes, two of those faculty members.

Q Which two of those?

A Professor Rosoff and Professor Silver.

Q Now, has Professor -- either of those two faculty members processed an appeal alleging that tenure has been improperly denied for one reason or another?

A Improperly denied?

Q Yes, sir.

A No, they have not filed such request.

Q Have either of those two professors asked that their denial of tenure be reconsidered without making allegations of any propriety?

A Yes, they have.

Q And is that -- is that tenure being reconsidered at the present time?

A Yes, it is.

Q When will a decision be reached?

A I hope that a decision will be reached before the beginning of the spring semester but this is something in which I don't have absolute control.

So we are hoping to push for that.

Q Which two professors are those?

A Professor Rosoff and Professor Silver.

Q Now, with respect to Professor Bittman?

A Yes.

Q Has any such request bee made?

A No, other than a personal request to me.

I don't think it would be in the nature of an appeal.

Q I see.

Has he asked to stay on on a new tenure basis?

A No, he is not elgibily -- I mean he is not at the point where a tenure decision must be made in his case.

Q His termination has nothing to do with --

A With tenure.

Q -- with tenure?

A No.

Q It would be the university's position before the Hearing Officer that non -- no faculty member who as resigned should be permitted to vote in the election.

It is further our position that Professor Bittman not having processed any appeal, having been given notice of termination and thus in all liklihood not being on the faculty of this institution in 1975, '76 should be permitted to vote.

The remaining two, Professor Rosoff and Professor Silver we take no position on at this time.

I have no further -- if you remember there was an issue on terminal appointment of resignees.

A Yes, I was going to ask for a position on that.

MR. KRAMER: And with respect to Rosoff and Silver and I want to cover my collecting and we will take a position on that area before the close of the area.

With respect to the others we have stated our position.

We just don't think there is a real community of interest shared between any person who has resigned his employment and the members of the bargaining unit who remain.

I will ask one other question.

Q (By Mr. Kramer) Dean Mirsky, if I resigned my employment as a full-time faculty member in your university -- your school today effective next academic year, I would continue to teach in your school would I not, until the end of this academic year?

A Yes, until the end of the academic year and be expected to fulfill all functions.

Q It still remains our position that there is an insufficient community of interest for this type of a person to vote in a board conducted election.

MR. SHECTMAN: We -- Petitioner opposed the position and I would like now recross examination.

HEARING OFFICER: Go ahead.

RECROSS EXAMINATION

Q (By Mr. Shectman) What was the name of the professor who as of this date Dean, has made no appeal as to the termination?

A Dr. A. Victor Bittman.

Q Could Dr. Bittman still conceivably make an appeal?

A Yes, if -- I mean I don't know of any time limit on an appeal.

He can appeal to me directly, he could appeal to thw Welfare Committee.

He can appeal to the University Review Committee which would make a decision on whether to accept the appeal or not.

Q On what basis would the Welfare Committee represent him?

A Pardon me?

Q On what basis or under what authority would the Welfare Committee represent him for the appeal?

A Upon his request that they conisder his case as an legitimate grievance and infringement of his welfare and that he asked the Welfare Committee to concern itself with his welfare as a member of the faculty.

Q And they could then conceivably represent him for the purpose of processing an appeal or assisting him?

A Judging by past practice they would try to listen to him I presume and get the grounds forhis appeal.

Q I am not asking for practice.

I am asking what they can do?

A Okay, I am telling you.

MR. KRAMER: I think the witness answered what they have done.

MR. SHECTMAN: I am asking what they can do under their authority.

They have specific authority in your governing documents.

MR. KRAMER: I would suggest the governing documents speak for themselves.

MR. SHECTMAN: It's broad language.

I am asking now what power they have in this particular regard.

HEARING OFFICER: Answer the queation, please.

A I can only base myself on past practice because I am not a member of the committee nor do I know that -- I know that in past where such instances have arisen the Welfare Committee has come to me speaking in behalf of a given faculty member and asking that the decision be reconsidered.

Whether they would go beyond that or not, I don't know.

That's up to them. I can't speak for the committee.

Q The University Faculty Review Committee -- strike that.

The three faculty members to whom you have referred would have been given notice of termination, will the

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prospective salary rates that were agreed upon for this academic year be implemented on their behalf?

A You mean will they get --

MR. KRAMER: I must object on the grounds that I have seen no agreement in this proceeding like that.

I mean I quite frankly know of none personally.

MR. SHECTMAN: Let me withdraw that question then.

Q (By Mr. Shectman) You testified, did you not, that there -- that the Welfare Committee had reached some conclusion with the administration as to when the salary schedule for full-time faculty?

A Yes.

Q Will that new salary schedule be effective as to these three individuals?

MR. KRAMER: I am not going to object to every -- there is no -- we are prepared to stipulate that they will be continued in the employ of the university for the period 1974, '75 and they will receive whatever salary treatment is appropriate under what arrangements may exist and continue to be required to do all the normal things that are expected of a faculty member.

There is no dispute in that area.

HEARING OFFICER: Does that answer your question, Mr. Shectman?

MR. SHECTMAN: That will satisfy the question.

MR. KRAMER: That's why I asked the last question of the witness.

I am not trying to hide these facts.

Q (By Mr. Shectman) Will the participation of these three faculty members on their respective committees be terminated this year?

A When they leave the school.

Q No, during the course of thise year?

A No.

Q Will they still benefit from their contributions to the pension fund?

A I presume so, yes.

Q Will they still be covered by the medical and disability insurance?

A If they are covered by that and continue to operate to be covered, I presume they will.

MR. KRAMER: I think the stipulation I offered really covers these matters.

MR. SHECTMAN: I have no further questions in this regard. So we can meet the objection.

Q (By Mr. Shectman) Does the -- strike that.

You have testified on several occasions with reference to the university faculty review committee.

Does that committee have any other power than a -- than advisory?

PROCEEDINGS

HEARING OFFICER: The hearing is now in order.

The resumption of hearing, Case number 2-RC-16662.

We are starting at 11:00 o'clock, due to the unforesee malfunctions of the attorney for the Petitioner's automobil and we are prepared to proceed at this time.

Mr. Kramer?

MR. KRAMER: Mr. Hearing Officer, can we go off the record?

HEARING OFFICER: Off the record.

(Discussion off the record.)

HEARING OFFICER: On the record.

Mr. Kramer, would you call your first witness, please.

MR. KRAMER: Dr. Isaac Bacon, please.

Whereupon,

DR. ISAAC BACON

called as a witness, having been first duly sworn in by the Hearing Officer, was examined and testified as follows:

HEARING OFFICER: Please be seated.

Would you please state your full name for the record?

THE WITNESS: Dr. Isaac Bacon.

HEARING OFFICER: Okay, Mr. Kramer.

DIRECT EXAMINATION

Q (By Mr. Kramer) By whom are you employed?

A Yeshiva University.

Q And how long have you worked for Yeshiva University?

A Since September -- since the summer of 1959.

Q And in what capacity have you been employed by the University?

A As theDeanof the college.

Q You say as the Dean of the College, which college are you referring to?

A The Dean of Yeshiva College.

When we say the "college", we mean Yeshiva College.

Q You have been the Dean of Yeshiva College since 1959?

A That is correct.

Q What did you do before you came to work at the University?

A I was a professor at the University of Colorado.

Q In what field?

A German and linguists.

Q In addition to being Deanof the Yeshiva University for the period 1959 to date, have you also any other title in the school?

A Yes, I do.

I am a professor of linguists.

Q Have you actually taught courses at Yeshiva College?

A Yes, I did, once or twice a long time ago, I would say.

next to the letters A, B, C and D.

What do those headings stand for?

A They stand for the four divisions of the college.

Q And I notice that next to each title which is adjacent to each of those letters, there are parenthesis with a name and designation, sermon.

What does that stand for?

A That is the name of the faculty member who is the elected chairman of that division.

Q Now, in addition to these A, B, C and D headings there are Roman Numerals with what appear to be subject matter by them.

What do those Roman Numerals stand for?

A They are subject areas which really -- the faculty would be the departments, but we do not have a department structure in the college, so we refer to them as subject areas, and the divisions in that structure -- the structure unit which comprises these various subject areas.

Q Is it correct then that you have subject areas within divisions in your college?

A Correct.

Q Now, you say that you do not have departments?

A True, we have no departments.

Q Are the subject areas sometime referred to as departments?

A Yes, in normal discussions we refer to them as departments.

Yes, they are defecto departments.

Q Now, let's turn to the column under "Full time".
What does that stand for?

A Well, these are the full time Yeshiva College Faulty.

Q Do they have their base appointments at Yeshiva College?

A That is what it means, that means that base appointment is at the College.

Q And what is the full time teaching for a faculty member with a base appointment at Yeshiva College?

A 12 hours or the equivalent.

Q Now, let's turn to the column "Part time".
What does that stand for?

A Well, these are people who are appointed, sometimes for a semester, sometimes for a year and they teach only a limited amount of credit hours, or I should say contact hours at the College.

Q Do they have full time appointments at any school of the University?

A Yes, they do.

Q Now, let's turn to the heading "University".
What is listed under that heading?

A University, that is faculty members who have a full member or teacher in the High School, but the High School is not really recognized as -- as aunit of the University.

It is just an affiliate or a branch of the Universit

I don't know what the legal implications were, but since he had a full time position in the High School, and it is called Yeshiva University High School, we listed him in the category of full time, but under the assumption that he is working here, since he is working part time, we listed him as part time.

HEARING OFFICER: May we hae some sort of stipulati as to the employees of the High School, as to whether the Petitioner seeks them and whether the employer would have them in or out of the unit?

MR. KRAMER: Can we go off the record?

HEARING OFFICER: Off the record.

(Discussion off the record.)

HEARING OFFICER: On the record.

In an off the record discussion, we have brought out the status of the High School -- Yeshiva University High School.

It is apparent from the discussion that Yeshiva University High School is not part of the University and, therefore, the employees or the teachers and instructors at the High School are not sought by the Petitioner and are not sought to be included in the unit by the Employer.

Mr.Shechtman?

MR.SHECHTMAN: Off the record?

HEARING OFFICER: Off the record.

(Discussion off the Record.)

HEARING OFFICER: On the record.

Any full time Professor at the University who teaches a course at the High School will not be effected by this decision to -- by this agreement to eliminate High School teachers and instructors from the unit.

If a Professor teaches a full time -- has a full time appointment at the Uniersity thenhe will be included in the unit, should the Board find such a unit to be appropriate.

MR.KRAMER: Let's go offthe record?

HEARING OFFICER: Off the record again.

(Discussion off the record.)

HEARING OFFICER: On the record.

In the previous statement by the Hearing Officer, the word "professor" encompasses all instructors, professors assistant professors and associate professors of the University.

Further, should the Board find that part time instructors would be included in the university unit, part time instructors who teach at the University and at the High School would be included in the unit should the Board find part timers appropriately included.

MR. KRAMER: Mr. Hearing Officer, the full time faculty members and the part time faulty members, that portion of the employment that was at the High School woul not be included.

MR. SHECHTMAN: Unless it was based on equivalent contact hours.

HEARING OFFICER: Let's go off the record again.

(Discussion off the record.)

HEARING OFFICER: On the record.

Mr. Kramer?

MR. KRAMER: I am advised by my client that hours taught at the High School, or hours which may be taught at the High School by either a part timer or a full time faculty member, is not, has nothing to do with the computation of contact hours or the equivalent taught in the University.

HEARING OFFICER: Okay.

In that case, I renew my comment which is that should the Board include within the bargaining unit full time faculty members who may teach in the High School, and part time faculty members who may also teach in the High School, and should a certification issue ultimately it is our view that the certification would extend only to that portion of the employment which is in the Universit

MR. SHECHTMAN: Mr. Kramer, pursuant to your representation, your prior representation, our view, the Petitioner's view, as a result of these proceedings would be similar.

I don't want to note for the record to the Hearing Officer that I again strenuously renew the objection of the Petitioner as to themanner in which the part time issue is being treated here, and the way it is obfuscated in this record, while the University refuses to take any position in that regard whatsoever.

HEARING OFFICER: Okay, your position is taken on the record.

MR.KRAMER: Mr. Hearing Officer, we ought to say that when we put on the Dean from the Medical School and the Streyer School, I think it will become apparent to you and to the person who ultimately reads the record why we have taken the position that we have taken.

HEARING OFFICER: Which is --

MR.KRAMER: No position, as of this time.

HEARING OFFICER: As of this time, all right.

Continue with your examination of the witness, please Mr. Kramer.

Q (By Mr. Kramer) Now, in the column under the heading "Yeshiva University" are certain abbreviations.

Would you identify those abbreviations for us Dean Bacon?

A Yes.

Well, actually a faculty member who teaches a course could teach it by the credits that the course gives to the students or by the contact hours of the faculty member has with the students.

For example, a person who teaches a laboratory, although the student may only get one credit for a four hour laboratory course, it still is four contact hours that this faculty members has with this student.

What we are doing here, and since the compensation is based on the contact hours, regardless of whether it is lecturer or laboratory, I listed here the contact hours, the amount of hours that the faculty member spends in the class with the student, or the laboratory.

Q Now, I note you have a Mr. Niel Ellman, visiting lecturer listed there with 15 contact hours next to his name.

Is that figure correct?

A I must say that this is really the hours that he is being paid for, compensated for.

He spends a much larger amount of time with the students.

He is a coach at the same time, he is a wrestling coach andhe spends a tremendous amount of time with out students.

By the way, that applies to all our physical educati

A That is in French.

Q Is it a fact, Dr.Bacon, that you have full time faculty members who are teaching less than 12, contact hours this fall?

A Yes, that is correct.

Q Do you have any teaching less than 9 contact hours this fall?

A I would hae one, yes.

Of course, there are equivalencies tomake it up, to at least 12, in order to have a full time position in the college.

Q Now, Dr. Bacon, based on Employer's Exhibit 111, are there part time faculty members at your institution teaching more contact hours than any of your full time faculty members?

A The answer is no.

Q Would you explain?

A Well, some full time faculty members, if they so desire, may request additional -- additional hours, and they can teach up to 18 hours per semester.

So that, actually -- which is, of course, being compensated, and this is what -- what does exist in the college.

Q Based on your recollection of the loading, Dr. Bacon, what would be the average number of contat hours actually being taught by your full time faculty members, an approximation?

MR. SHACHTMAN: I object.

Can we see if the witness has a basis for making such an estimate?

Q (By Mr. Kramer) Dr.Bacon, are you familiar with the contact hours taught by the faculty members in your school?

A Yes, I am familiar with it, of course.

But I would have to go down the list, I don't know exactly who is teaching more than 12.

And then I would have to do some computation.

Q Would you take a look at the list and try and give us an approximation, as to the actual number -- correction, as to the average number of contact hours being taught by your full time faculty.

A Well, of the 36 full time faculty, there are 19 who have overages, overloads.

I think it wouldbe safe to say about 14 hours.

Q That would be an average?

A An average.

Although, again, I really would -- I didn't make any computation.

Q And 12 hours is considered a full time load?

A 12 hours is considered a full time load, right.

Q Do any of the faculty members on Employer's Exhibit 111 have a full time appointment?

A Oh, no.

on the Exhibit 111, was discussed.

There was no stipulation reached and it will be discussed at a later date.

Go ahead, Mr. Kramer.

Q (By Mr. Kramer) Now, Dean Bacon, will you tell us what your responsibilities are as Dean of Yeshiva College.

A The function of a Dean is to provide a vocational leadership and that is what I am trying to do, to the academic community of the college.

I am responsible to the Vice President -- through the Vice President of Academic Affairs, as to the way the College conducts itself.

Q Subject to your supervision, to whom is the management of the College entrusted?

A To the faculty.

Q Are the students involved also?

A To a certain extent, yes.

Q Now, let's turn, Dean Bacon, to Employer's Exhibit 55, which is appended or a part of Board Exhibit 2 in this case.

(Handing to the witness.)

Q Is this document which is entitled "Yeshiva University, Yeshiva College Faculty Status" still in full force and effect?

A Yes, with one -- with one, of course, stipulation, which I think was noted last year also.

In paragraph three, Roman Three it is not in operation.

The document is in operation with the exception of item Roman Three.

Q Which is on Page 4 and 5?

A Right.

Q Entitled "Departments" is that correct?

A That is correct.

Q Is that why you have told us that you did not have departments dejure in your college?

A That is correct.

Q Now, I show you Employer's Exhibit 56 in evidence, as part of Board Exhibit 2.

(Handing to the witness.)

Is that an up to date version of the constitution of the Yeshiva College Senate?

A I don't think so.

It is not.

MR. KRAMER: Mark this as Employer's 112.

(Whereupon, above referred to document was received and marked Employer's Exhibit 112 for identification, of this date.)

Q I show you Employer's Exhibit marked 112 for identification, entitled Yeshiva University, Yeshiva College, the been in the college for five or more years and teach three or four hours in the college."

They could vote, and by the way, we are talking about part time faculty, it does not -- the other category that we have, the part timers in the College, who are in the University, also have, under certain circumstances, a right to vote.

Q Dean Bacon, do you attend faculty assemblies?

A Yes, I am a chairman of the assembly.

Q Do part time faculty members, other than those who are eligible to vote, attend the faculty assemblies?

A Certainly, not as regularly as I would like to see them there, but they do.

Q They do attend?

A Yes.

And I wouldn't say in great numbers either.

Q Now, Dean Bacon, there is a Senate structure found in the Yeshiva Faculty statute, begining on Page 7 of Employer's Exhibit 55, and a committee structure of the Yeshiva College Senate, beginning on Page 3 of Employer's Exhibit 112, is that correct?

A That is correct.

MR. SHECHTMAN: Excuse, me, could we have that question repeated or have counsel clarify?

MR. KRAMER: Let's go off the record?

Whereas on the committees that we have now, they have the same names and mainly the same functions, do include students on these committees.

Q To whom do the -- I will call them the overlapping committees report?

A They report to the Senate and to the faculty, since according to the statute the faculty has veto power over anydecisions and solutions passed by the Senate.

So that the faculty committee that reports to the Senate and the Senate approves, then it still would go back to the faculty and would report there.

Q Dean Bacon, do any students sit in the faculty assembly?

A They do not -- they do not have any voting rights, but whenever Senate decisions or Senate resolutions are discussed, at the faculty assembly, they are being invited to come, to participate.

They have a right to participate, but they do not vote in these matters.

Q Only the faculty may vote?

A Only the faculty may vote.

Q I -- as stated in the constitution of the faculty assembly, is that right?

A Correct.

Q And the faculty assembly has a veto over the Senate, is that correct?

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A Over the Senate resolutions.

We just vetoed one just two days ago.

Q Dean Bacon, have you veto over the faculty assembly?

A No, I don't.

In fact, I may add here that when the Senate was written in 19 -- in the summer of 1969, the student and faculty that were writing the Senate constitution, did include a veto power by the Dean and he declined to accept this, so it was stricken from the constitution.

Q So neither the constitution of the Senate nor the constitution of the faculty assembly, which is all the faculty statute, Employer's Exhibit 55, provided a veto foryou, is that correct?

A That is correct.

Q And you, in fact, did not have such a veto I take it?

A No, I don't.

Q Is it then correct, Dean Bacon, that the faculty assembly may direct action within your school that is binding upon you as Dean?

A Definitely.

Q Would you give us a few examples of how this could, come about?

A Well, I would presume that any kind of matter that is being taken up in a committee or in the Senate, and has been approved by the faculty or not vetoed by the faculty, that as far as I am concerned, becomes the law of the College.

As a matter of fact, I find myself very often on opposite ends in Senate meetings where I vote against certain procedures, but once the Senate has approved it and the faculty not vetoed it, then I feel that I execute these -- these regulations.

Q And the scope of the Senate is found in Article 2, on Pages 2 and 3 of Employer's Exhibit 112?

A That is correct.

Q And would encompass discussion and disposition of all matters submitted to it by the administration, the faculty, the student council and the Yeshiva College Alumni Association?

A Not the student council, students.

Q It says "student council".

A On, I see.

I am sorry, yes.

Q Is that correct?

A That is correct, yes.

Q Together with all of the other items listed in Section 1, Page 2 of Employer's Exhibit 112, is that correct?

A Student council matters would be brought before the

Senate through its representatives on the Senate -- by student representatives on the Senate, right.

Q And in addition, all of the other items in Section 1 would be for disposition by the faculty-- by the Senate, is that right?

A That is correct.

Q And the faculty assembly, which is referred to in Employer's Exhibit 55, has the right to approve or disapprove action that the faculty Senate, is that correct?

A Not the faculty Senate.

Q Of the College Senate?

A That is correct.

Q And you have no veto over that faculty assembly at all?

A No, I don't.

HEARING OFFICER: I would point out for the record that Article 2, Section 3 refers to the veto power discussed in Mr.Kramer's --

MR.KRAMER: Of --

HEARING OFFICER: -- of Exhibit 112, which has been discussed by Mr. Kramer, is that correct, Mr.Kramer?

MR. KRAMER: Let me just read it.

HEARING OFFICER: Go ahead.

MR.KRAMER: I think the Section 3 speaks for itself.

It refers to veto, but in a somewhat different context.

Q (By Mr. Kramer) Dr. Bacon, does the president of the University have the power to disapprove actions of the faculty assembly?

A Well, they all come -- yes, he does.

But the fact is that the President has never vetoed any decisions of the faculty assembly, certainly not in my time and not to my recollection.

Q And you have been there for better than 15 years?

A 16 years, yes.

In fact -- in fact, the presidenthas never vetoed any of the -- vetoed any the senate resolutions either.

There was one item that came to the president and he asked -- although he had the right to veto it, he asked that the Senate reconsider this, its decision that it had reached and that is the way it was left.

Q Dean Bacon, I show you Employer's Exhibit 113 --

MR.KRAMER: Mark it.

(Whereupon, above referred to document was received and marked Employer's Exhibit 113 for identification, of this date.)

Q (By Mr. Kramer) It is a document entitled Yeshiva University, Yeshiva College, faculty college committees, 1974-75, as approved by the faculty assembly on September 11, 1974.

(Handing to the witness.)

Was this Exhibit prepared under your supervision and control?

A Yes, it was.

Q Have you checked it to make sure it was accurate?

A Yes.

In fact, I found a few errors and they are corrected on that Exhibit.

I shouldn't say errors really, they were simply changes that occurred since September 11th, so they are up to date as of today.

Q Now, Dean Bacon, that is -- let us turn to the Committee on Curriculum and Instruction.

Is that committee referred to in both Employer's Exhibit 55 and Employer's Exhibit 112?

A Yes, it is.

Q Would you tell us what the function of the committee on curriculum and instruction is?

A Well, the committee -- this committee receives all requests for new courses, which is forwarded to it by either the Senate or by the divisions, the various divisions.

Q And what happens to these requests?

A Well, this is really quite a protracted progress.

If a faculty member feels that he would like to add or create a new course, very often I initiate such courses myself and discuss it with the faculty members and get him orher interested.

They would have to take it to the department, and if the department approves it, itgoes on to the division.

If the division approves it, it goes on to the curriculum committee and if -- andif the curriculum committee approves it, it becomes a course in thecollege.

This is one way, this is one track.

Another track would be that a course is initiated in the Senate and in that case, if the Senate -- if it is initiated in the Senate, it still has to go throughthe Department and then on to the division and, finally, to the curriculum committee.

Only there it has to return to theSenate for finalization.

Now, any course request or any course -- any new course which is accepted and approved by the curriculum committee, technically, it would still have to be approved by the faculty.

What we have been doing is distributing the decisions of the curriculum committee to the faculty, and if there is no objection, that new course is then the new course in the college.

And, of course, if there are some objections by faculty, then I putit on the agenda of the next faculty assembly, at which time the faculty assembly decides whether the course is to begiven or not.

There is another track which I think I ought to mention.

That is that I have the privilege, which was given to me by the faculty, to initiate courses on an experimental basis.

So that, of course, maybe introduced to the college without this -- without following the formal track.

The only stipulation that these courses have, it must be brought before the department -- I am sorry, I wouldn't introduce such a course if it is not introduced by thedepartment, but it has to go then to the division a nd to the curriculum committee.

If they are approved then, of course, the course becomes a legitimate course in the college.

If it is disapproved, it would have to be stricken f rom the schedule.

Q Have they, in fact, disapproved, Dean Bacon, of a course that you had initiated, or a program that you have initiated?

A That I have initiated?

Q Yes.

A I cannot think of one.

Q But they have the authority to disapprove?

A They have the authority to disapprove, right.

Q You testified that you have the authority to put a course into effect, I believe, for one term, is that correct?

A Yes.

Q Where did you get that authority from?

A Well, the faculty assembly accepted that, that the Dean should have the privilege.

Q In other words, the faculty agreed that you should have that authority, is that correct?

A Yes.

Q It was not given to you by the president of the University?

A No.

Q Or by the Board of Trustees?

A No.

Q By Dr. Fishman?

MR. SHACHTMAN: I object to this questioning.

Normally, some leading of the witness, I know, there is not, certainly, problematic, but where the attorney for the University is putting words in the mouth of the witness.

The witness answered directly and now counsel is only reciting alternatives and asking the witness for an assertion.

on the record is not unequivocal, and counsel can cross examine, and I am asking whatever questions you like.

HEARING OFFICER: I am going to ask some questions, if it is allright with you.

MR.KRAMER: All right.

HEARING OFFICER: When you say thisprivilege is granted by the faculty, how did that granting come about?

Was it specifically stated that the Dean has the privilege to introduce such courses, or did you institute such courses and receive no objection from the faculty, or was it your institution of such courses ratified by the faculty, after the fact?

THE WITNESS: Well, if I would have to answer, where I could find anywhere in the minutes of the faculty assembly that the faculty is on record in doing that which you are asking, I think I would be -- itmight be difficult to find such an official approval.

MR.KRAMER: I don't think the witness is finished.

HEARING OFFICER: I am just trying to help him.

MR.KRAMER: You stopped him in a middle of a sentence, though.

HEARING OFFICER: Well, continue, Doctor.

THE WITNESS: Butthe fact is that in discussing it with a number of faculty members theyfelt that this privilege ought to go tothe Dean, especially since I was the one who urged the faculty to write a statute that was actually my first act when I became Dean of Yeshiva College in the fall of 1959, to ask the faculty to write the statute, because I wanted a statute to be written by the faculty.

And when we established -- and I felt that new courses should not be introduced and not be brought in by the Dean or by any administrator, but it should come from the faculty.

And, actually, I have given up a kind of authority w hich I will presume, although I did not know, was in the hands of the Dean before I came to Yeshiva College.

And the faculty found it quite helpful, because a number of faculty members actually benefited from the fact that I had a chance -- that the college had a chance to bring into its schedule a number of courses, which, perhaps would not be on the scheduleof courses today.

I don't know whether I am answering the question.

The fact is, that the faculty has never objected.

If you want to have this question answered directly, the faculty has never objected to my introducing courses on an experimental basis.

So I cannot be as positive as you would like me to be, whether it was officially instituted as a -- enough to find its way in the minutes of any college-- in any faculty assembly.

But there were neverany objections raised to going with this procedure.

And, in fact, I was commended for going ahead with these, because we introduced a number of rather imaginative new courses, which were taught by two or three people.

Sometimes we had more faculty teaching the course than we had students in the class.

Q (ByMr. Kramer) Dean Bacon, does the faculty have the power to disapprove the continuance of these courses, experimental courses?

A Yes.

Unless it is approved ultimately by the division and the faculty committee, the course would have to go off the schedule.

HEARING OFFICER: Go ahead.

Q (By Mr.Kramer) And all full time faculty members are eligible to vote in the faculty and assembly, is tat correct?

A Yes.

And all those others who, according to the statute have the right to vote.

Q Now, Dean Bacon, let us turn to the scholastic standing committee.

Would you tell us what the function of the scholastic standing committee, which is referred to in both Exhibits

55 and 112, is?

A Yes.

By the way, did I mention that there are students who are on that committee of curriculum and instruction?

Q Yes, the exhibit reflects that.

A The scholastic standing committee is a very, very important committee of the College, and it handles all requests from students for early graduation.

It handles requests from students for professional option.

It approves requests for honors projects.

It approves requests from students for requests for independent studies.

The scholastic standing committee is in charge of the scholastic standing of all the students in the college, but primarily students on probation.

The scholastic standing committee places students on probation and takes students off probation.

It deals with matters of probation, and there are quite a number of perimeters.

For example, a student on probation must not take more than one and a half credits in a semester, while he is on probation.

He may petition for one, two or three credits and the scholastic standing committee may approve or disapprove.

They are not allowed to have any jobs, outsidejobs.

The scholastic standing committee, again, will approve or disapprove such a request.

The scholastic standing committee decides on the academic dismissal of the student.

This means that if the student does not have -- maintain a certain educational level, it has the power to ask the student to leave the college.

It deals with situations that come up before the faculty assembly.

Q Such as?

A Well, one such item which was on the agenda, that is faculty assembly, and unfortunately we had so much pressing business that we didn't get to it, was grading practices, something which I think is very much of concern to all educational institutions, the inflation of grading, of grades in the college courses by faculty.

And the matter was brought up in the assembly and the the faculty assembly and the faculty assembly directed the scholastic standing committee to make a study of it and to present its findings and recommendations to the faculty assembly.

It is probably going to come up, hopefully, at the next faculty assembly.

This is just one item.

Q Dean Bacon, a student who is dismissed for an academic insufficiency ceases paying tuition, does he not?

A Yes, he is no longer a student in the college.

Q Dean Bacon, a student --

A We would have no objection -- we would have no objection, we would prefer that he continue paying, but there is not much of a chance of this happening.

Q We would join in that.

Dean Bacon, do many of your students work?

A A good number of the students, yes.

Q And are there students that if they cannot work, cannot stay in school?

A Well, I must say that I would really not be in a good position to answer this question, because we have, basically, that no student at Yeshiva College, who qualifys, should not have the opportunity to be in the college.

And so I do not know, really, how to answer your question.

Q If a student who is put on probation was precluded from working --

A That is correct.

Q And if that created financial difficulty, what would be the course for the college to follow?

A Well, the college, the scholastic standing committee, would still have to insist that such a person must not take a job on the outside, except when he makes a request and he can show a bone fide case, that perhaps his probation or his falling below standards was really not strictly academics, maybe health reasons or something of that sort.

Then the scholastic standing committee would approve it.

Butunless thescholastic standing committee would approve such a request, the student may not take a job on the outside.

Q And might require financial assistance from the institution?

A Well, this is what I understand.

Q Well, Dean Bacon, is the premedical major an important one at Yeshiva College?

A Yes, it certainly is.

Q Would youexplain that?

A Well, most of our students are interested in premedicine.

They want to go into medical school, and the situation has become more accessibated now where, really, in terms of career opportunities.

This is the best career opportunity besides law school and business school.

Q Are grading practices important to medical students?

Yes, it is a matter of life and death.

Q Now, Dean Bacon, are the grading practices of your institution relevant, whether your school will be selected by pre-med students rather than other schools?

A This is a very important situation.

Q Why is that?

A Well, Yeshiva College has a record andI am glad to know that the faculty is on record, that we are interested in maintaining standards, which becomes more and more difficult as we look around us and find that the standards are being lowered all around us, and all institutions.

And I am talking about real outstanding institutions.

We have quite a number of them in the metropolitan area of New York, we insist on maintaining the standards and maintaining grades.

As a matter of fact, I have written a memo to the Albert Einstein College of Medicine, to the admissions committee, to inform them that while we are very much concerned about the tyranny of grading, we still feel that an "A" must mean an "A" and a "B" must mean a "B" and, of course, an "F" must mean an "F" as well.

That, of course, is a very serious problem, as far as attracting students tothe college, because they can do much better in terms of grade averages by going to other schools.

And I don't want to mention other schools.

I think those you know the situation in the New York area probably can substitute a good number of schools, names of schools.

And so the competition for grades, I must say is very, very fierce.

Our students are very, very grade conscious and it is fantastic.

They willgo through all sorts of contortions, programs, in order to avoid a faculty member who they know is a tough grader.

Q Who establishes the grading system in your school?

A Our faculty.

Q And the grading system is set forth in the catelogue, is it not?

A They are set forth in the catelogue.

Of course, it is determined by thefaculty and it is in the catelogue, but I presume that any catelogue that you pick up will have the same description of grades.

But it does not mean, really, that the faculty will follow it.

Whereas in our case, a good number of the faculty feel that they have to follow the standards of grades.

Q And the grading system in the level of marking is relevant in the students' selection of schools and otherwise?

A Not only the school, but otherwise.

Q In the selection of schools?

A Absolutely.

Q And the university service tutition is tied up, to at least a certain extent, to the type of grading system that is involved?

A Absolutely.

MR. SCHACHTMAN: I object to the leading of the witness to a conclusion.

HEARING OFFICER: Sustained.

Q (By Mr. Kramer) Is the grading system, since we can't lead, or is the grading system not relevant, one way or the other, would you please answer, as to whether students select your school over anotherschool?

A Well, I would have to unequivocally say that the grading system is a very important indication, as far as students selecting Yeshiva College is concerned.

Q Now, Dean Bacon --

A In fact, I think I can go a step further.

I can state that a number of our students who -- I think I must phrase it a little differently.

We had for many years, and I am going back, let's say ten -- a decade ago, we had a very low, what we call attrition rate which was much, much lower than that of practically any school in the country.

That attrition rate has risen considerably and -- well, to our concern, very high.

Especially, students having been with us for a year or two years, may -- many of them decide to go to Israel and when they return, they somehow don't return to Yeshiva University.

We have definitely determined that it is because of the grading practices that we have at thecollege.

Q Does the president of the institution establish your grading practices?

A The faculty establishes the grading practices.

Q No one else, I take it?

A No.

HEARING OFFICER: How have you determined that these people who have left the school have not returned because of the grading practices?

THE WITNESS: Well, we are verymuch concerned about it and we are trying to find out why they are not coming and we have determined two things.

They say, "We can get an easy three point eight, three point nine, and today you must have that kind of an average in order to get into a good medical school, and we can get that by going to another school where we are competing with a different type of student, and we don't have to put up with the tough grading that is being given in Yeshiva College."

This is one aspect.

There is another aspect, by the way, which really does not bear here.

We have, for example, we insist on a residence requirement of practically four years.

You notice that I mention that the scholastic standing committee has to approve any requests for early graduation, which means for graduation before completing four years.

We still insist upon it, whereas many schools in the metropolitan area do not insist upon the residence requirement.

This is one of the reasons why I -- why our students are not coming back to Yeshiva and, of course, that means again, less funds as far as the college is concerned.

HEARING OFFICER: Could you explain "residency"?

THE WITNESS: Residency means that we expect the student to be eight semesters in the college.

HEARING OFFICER: Resident at the University?

THE WITNESS: They have to be eight semesters in a college level.

In other words, normally, colleges normally have a credit requirement, in addition to other requirements, like major requirements.

I think the City Universtiy is 120 credits.

We have 128.

HEARING OFFICER: 124.

THE WITNESS: Well, anyway, we have 128 credits, but this is not enough.

In other words, in addition to the 128 credits and in addition to the other requirements that are normal in an academic institution, we also require our students to be eight semesters in the college.

And I might say that that was definitely passed by the faculty assembly, and we have the minutes.

Q (By Mr. Kramer) Not by the Board of Trustees?

A No.

Q Not by the President of the institution?

A I think I made my position very clear.

Q They were the only ones, right, Dean Bacon?

A Right.

MR. KRAMER: Just so the reader of the record does not make the same mistake we are getting in other cases,

THE WITNESS: As a matter of fact, I don't know whether the administrator would not be amenable to, perhaps, to reconsider that position.

Q But, nevertheless, that is the position?

A That is the position.

Q Now, let's turn to the student activities judiciary

Q (By Mr. Kramer) Dean Bacon, in addition to the committees that are listed on Employer's Exhibit 113, is there a promotion policy committee of the faculty assembly?

A Yes.

It is an ad hoc committee which was voted in by the faculty which -- which was charged to, originally, to establish criteria for promotions, and fromtime to time to recommend changes in that policy.

Q Recommend to whom?

A To the faculty.

Q And is that a functioning committee?

A That is a functioning committee.

Q And the promotions that are being governed are promotions within the school, is that correct?

A Within the college, yes.

Q Yes, within the college.

Is there an ad hoc committee on tenure criteria?

A Yes.

That committee was actually established very recently in response to a report and a request by the State Education Department to all institutions -- post secondary institutions in the State of New York.

It was presented to the faculty assembly upon the recommendation of another committee, the committee of senior faculty members.

The faculty voted such a committee, and, as a matter of fact, that commitee met for the first time yesterday.

Q What was the committee meeting about?

A The committee is to establish criteria under which faculty members will be recommended for tenure.

HEARING OFFICER: Excuse me, Dean Bacon.

You mentioned a committee thatrecommended formation of the tenure committee? A committee of senior faculty?

THE WITNESS: Right.

HEARING OFFICER: That committee is not listed.

THE WITNESS: It is another ad hoc committee.

HEARING OFFICER: It is an ad hoc committee?

THE WITNESS: Yes.

MR.KRAMER: That committee is not listed and that is why we are dealing with them in this fashion.

HEARING OFFICER: Go ahead.

Q (By Mr. Kramer) Is the promotion policy committee made up only of faculty?

A The committee on --

Q Promotion policy.

A The committee on promotion policy, yes.

Q And is the committee on tenure criteria made up only of faculty?

A They are.

As a matter of fact, a meeting was called yesterday by me and I simply looked that they would organize themselves, and as soon as they established a chairman and a secretary, I withdrew and asked them to deliberate on their own.

Q Now, Dr. Bacon, let's turn to the divisional structure of the college.

You have told us that the division chairmen were elected, as I recall.

A Yes.

Q When did this election or these elections, as the case may be, take place?

A It took place a long time ago.

Q Approximately how long?

A I am under oath, I really don't know whether I could be very exact.

I would really be guessing.

Q Well, I don't want you to guess.

If you can think and try to come up with an approximation, but a mere guess or a surmise --

A All I can say is several years ago.

Q Would you tell us what function or functions the division chairmen performs?

A Well, the first function, the immediate function is, of course, to call meetings of the division.

Remember, the division is a unit that comprises a number of subject areas or departments, as we might call them in short.

The purpose ofthe meetings may be many fold.

One of the most important ones are in -- to deal with new courses that have been recommended by either the department or by the committee.

Theymay, they have to decide upon, oh, whether credits may be increased.

In other words, if a course is a two credit course, if it is a two credit course and they want to increase it to a three credit course, or they want to decrease a two semester course to a one semester course, with basically the same syllabus that would be within the perrogative of the division, and the division chairmen would call a meeting for that purpose.

So that is one thing, to call the meeting of the division.

Division chairmen also sit in various councils.

They sit with the Dean in the advisory council.

The advisory council of course, has some very important functions for the faculty to determine and deliberate on.

Q Let's turn to that advisory council, Dean Bacon.

Would you tell us who make up the advisory council of Yeshiva College?

A The advisory council, as I indicated, consists of the four divisionchairmen.

Q Anyone else?

A And myself the Dean.

Q Anyone else?

A No.

Q Would you tell us what the important functions, I think you referred to them that way, of the advisory council are?

A The advisory council deliberates on requests for promotions, and it deliberates on requests for sabaticals.

Q Now, would you tell us the role of the division chairmen with respect to, first, with promotions and then sabaticals?

A Well, if a faculty member feels that he is justified to be considered for a promotion, then very often he will come to me and I will tell him to write a letter to the chairman of his division and to give the reasons why he thinks he should be promoted.

The division chairman -- by the way, I also ask them to send me a copy too, because I want to be sure that no faculty member is overlooked by a mistake or any other reason.

The division chairman would then at the meeting present that request, with a recommendation.

The advisory council would then deliberate on the merits of the recommendation and the merits of the request and made a decision, which could be positive or negative.

If it is positive, then I would carry the recommendation tothe president.

If it is negative, I would carry the recommendation to the president.

Q Now, you have told us that the division chairmen make recommendations when a faculty member seeking a promotion comes before the advisory council.

In addition to the proposal --

A To the proposal, yes.

Q -- when that recommendation is positive, favorable, what form does it take?

A In regards to --

Q To promotion?

A By the chairman?

A Yes, by the chairman.

A He would present it and he will give reasons why he feels that the person should be promoted and try to by good democratic procedures, to convince theother members of the advisory council that they should vote for such a promotion.

Q Now, when the chairman is against the particular promotion, what form is used to demonstrate that?

A Well, he would present it, he would merely present it and he will not make the glowing recommendation that the rest of the advisory council should approve it.

In other words, he would simply make the presentation and it would be discussed, and depending on how the rest of the members feel about it, the decision is going to be taken to the president.

Q Now, when the department chairman suggests a negative judgment in the fashion you have just described --

A There would not be many cases of that sort.

Q In those cases, what was the reason -- the result?

A The advisory council did notrecommend promotion.

Q Now, in those cases where the chairman made a favorable recommendation, in addition to the proposal, where it was his judgment, generally, and I am not saying always but generally, it was accepted by the advisory council?

A Generally, yes.

Not always, but generally, yes.

MR. SCHECHTMAN: Could we have that question read back?

HEARING OFFICER: Read the question back.

(Whereupon, thepending question was read back by the Reporter.)

Q (By Mr. Kramer) Dean Bacon, has the advisory council voted to recommend a promotion that you were against?

A I think you will tax my memory.

I really don't know if I could respond to that.

I can say that there was once a recommendation by the advisory council against a promotion, where I felt a promotion should be given.

This case only occurred quite recently.

Q And that promotion was not given, is that correct?

A That promotion was not given.

Q Now, let' sturn to sabaticals --

A I am sorry, I think I have a very definite case of a person whom I felt should not be recommended, and the advisory council recommended it.

As a matter of fact, if I remember correctly it was a vote of three to one in favor of promotion.

And this person was promoted by the president.

Q That is in addition to the recent case you have just mentioned to us?

A Yes.

The recent case was just the reverse.

Q Would you tell us about that, so that the record is clear.

A The recent case is where the faculty advisory council was opposed to a promotion, where I felt for various reasons that the person should be promoted.

I was trying to persuade the advisory council to change their position on this matter, but the advisory council, I must say in retrospect, I think that they were wise in doing what they did, and acted properly.

I must say that this person was not promoted.

It created a tremendous amount of havoc inthe college, by the way.

Q Now, that you have said "created a tremendous amount of havoc in the college", would you explain that, Dean Bacon?

A Yes.

The students, we had a tremendous amount of uphevel in the college caused by the students, which I foresaw.

Q Nevertheless, the decision of the advisory council stood?

A That is correct.

Q Is that correct?

A Yes.

In other words, the important is that the president did not feel -- he did not feel that he would want to overrule the recommendation of the advisory council in that respect.

In other words, the president has neveroverruled, whether it was positive or negative, the recommendation of the advisory council.

Q The advisory council was created -- who created the advisory council?

A By the faculty.

Q Now, would you tell us about how sabatical leaves are handled in the advisory council?

A Well, in a similar fashion

A faculty member -- at one time or another, by going over the listing of the faculty, and when I send out a list to all members of the faculty indicating -- I am sorry, I have to correct that.

I send a list to allmembers who are qualified to apply for a sabatical, which is established by our University faculty handbook and to apprise them of the fact that they are eligible for a sabatical, if they have a project and if they desire to have one.

And if they do feel that they would like to haveone, they would -- they are advised to send a letter of request to the chairman of the division, with a copy to me, and it is being discussed in the same way as the promotion.

In other words, the person makes the recommendation makes the presentation.

The chairman of the division makes the presentation with his recommendation, and then the advisory council makes a decision which I then take to the president.

Q Are the recommendations of the chairman generally accepted by the advisory council?

A Generally they are accepted, yes.

Q And has the president overruled any of the determinations of the advisory council re sabaticals?

A Never, yet.

Q By the way, Dean Bacon, with respect to promotions does the faculty member have an appeal channel open to him?

A Well, we have a University review committee which is a committee consisting of elected faculty members from all the schools of the University.

MR. SHACHTMAN: Excuse me, if I may interrupt, the University review committee, we have had ample testimony on it on the prior hearing dates here.

Moreover, the records from the prior hearings likewise reiterate the same testimony, so now we are repeating it for the third time, I believe.

I move that we not elaborate.

MR. KRAMER: Mr. Hearing Officer, we did not take a position there that we are taking here, that regardless whatever determination the Board may make with any issues that are raised, the University review committee is supervisory and/or managerial, and in that situation I think we are entitled to a somewhat broader explanation.

MR. SHECHTMAN: We have already introduced its bi-laws and its procedures and we have already had testimony

Q Are these senior professor or senior members also referred to in the parlance of everyday speech of Yeshiva University as chairmen of the department?

A Yes, we talk about them as chairman of the department.

HEARING OFFICER: As noted there are senior professors, chairmen of the divisions.

Is there a requirement that to be a chairman you would have to be a senior professor or is this just coincidence?

THE WITNESS: No, they were elected by the faculty.

They were elected by the faculty.

Q (By Mr. Kramer) Are the senior professors or the senior members, right now I am talking about the division chairmen who happen to be senior members or senior professors, are the senior members or senior professors in each of the department also elected by the members of that department?

A No, they are not.

Q How are they established?

A Well, I will have to say with the one exception of in English, it is the person who has served in the department longest, in terms of years of service.

HEARING OFFICER: What is the discrepency in the English Department?

THE WITNESS: I think there was simply an agreement in the department that they would have the oldest member in the department who is Dr. Linn, but by one reason or another I must say I do not know because it was before my time, Dr. Fleisher was considered, and has continued to act as the senior professor in the English department.

Q (By Mr.Kramer) But otherwise it is the senior professor in the particular subject matter area?

A Right.

Q Now, would you tell us what role the senior members have, if any, in the hiring of full time and part time faculty members?

A Well, he certainly has a very important role in that area.

If it is determined either by the Dean or by the senior member that an additional faculty member might be necessary, then I would ask him to look around, to look over letters of recommendation -- letters of applications, and find those whom he would, or she, by theway, would like to interview, and tell him that if after the interview he finds that that person would be a good addition to the college, then I would ask him to bring that person to my office.

At that time I either interview him myself or together in the presence of the senior member.

We then, after the interview, make a determination whether this person should be added to the faculty.

Q When you say, "after the interview we make a determination --" what do you mean?

A Well, the senior faculty member and myself.

Q How do you go about doing that?

A Well, he tells me -- after the fact that he even brought him to me for an interview, that indicated that he finds him acceptable, and then I would like to interview him.

There are all sorts of considerations that have to be takeninto account.

Very often we like to interview two or three or four people before we make a decision.

A decision is made, basically on his recommendation, on which of the people would be thebest one to follow through on, and that is what we are doing.

Q Dean Bacon, in the over 15 years that you have been Dean of Yeshiva College, have you ever appointed a full time or part time faculty member over the objection of a senior member?

A No, I did not.

Q During the 15 years, over the 15 years that you have been Dean, have you appointed people on the recommendation of senior members of whom you had independent doubts?

A No.

You are taxing my memory, 15 years is a long time.

MR. KRAMER: I withdraw that question.

THE WITNESS: I am sorry, what did you say.

MR.KRAMER: I withdraw that question.

HEARING OFFICER: While we are on the particular subject area, have there been occasions where a professor has -- a professor has recommended or a chairman has recommended thatyou hire someone, where you haven't hired that person?

THE WITNESS: That is exactly what I said, I never --

HEARING OFFICER: That is not it exactly.

MR.KRAMER: Say it again, Mr.Hearing Officer.

HEARING OFFICER: Have there been people recommended by the chairman who have not been hired on your decision, whether that decision takes into account financial or other aspects of the Yeshiva College?

THE WITNESS: Well, we have never come to this position, because when we discuss the matter, we take into consideration all sorts of factors and we come to an agreement.

And if the agreement is reached between the senior faculty members and myself, that we ought to go ahead, with adding a new faculty member, we follow the procedure which I outlined to you.

That means, then we go ahead with the recommendation of the faculty member.

There is one interesting case, perhaps, which I might bring in here, where I -- where a person was recommended because of a certain situation which has happened now recently, and you probably know that I said in the case of Dr.Levine, who has been the senior faculty member, and I must say legally he is still the senior faculty member of the chemistry department,but we have now a University chemistry department and the chairman of thatdepartment who is a member of the Belfer Graduate School, recommended a part time person to teach in the college.

I asked Dr.Levine about his position, and after lookinginto the record, he opposed the appointment of such a person.

I sustained his position.

And I must say I sustained it even over the objection of Fishman, the chairman for academic affairs.

Q (By Mr.Kramer) Dr. Bacon, do you generally accept the recommendations of the senior members as to who should be hired?

A Yes.

Q Could you tell us, if you know, Dean Bacon, how much time do the senior members spend in the hiring of part time faculty, during a particular academic year, if you know?

A That would be very difficult to determine, because some department,of course, are much more involved and some are less involved by reason of the fact that the student population in the various areas.

I would have no indication of how to determine.

Q It would be determined, would it not, on the number of part timers to be hired?

A Yes.

Q The number of candidates to be interviewed?

A That is correct.

There is another thing, for example, the subject matter.

We get hundreds of applications for positions which are forwarded, sometimes they are, of course, coming directly to the chairman of the department -- to the senior faculty member.

Sometimes they come to me and I channel them back to the senior faculty member.

These people not only read these recommendations, although, for example, in English, let's say, we may be getting a hundred -- it could be more, it could be a little less in a semester, and inspite of the fact that we are at this moment not considering any additions, certainly not full time additions, possibly part time, but the chairman, Dr. Fleisher, looks through all of these letters and makes notations in terms of qualifications and which must take quite some time, quite a bit of his time.

But to determine how long, I think it would be very difficult forme to determine.

Q Dean Bacon, -- go ahead.

A I am sorry.

Q Dean Bacon, how is it determined whether you will or will not reappoint --

A I just wanted to talk about that.

Q -- reappoint an, either a full time probationary faculty member or a part time faculty member?

A Yes.

I wanted to add to that, not only are such decisions upon appointments made with the senior faculty members, but decisions about reappointment and disappointment are also made with the senior faculty.

Q Would you tell us about that, please.

How are the decisions made not to reappoint a full time faculty member or a part time faculty member?

A Well, basically, of course, it is a matter that at a certain time I would get together with the senior faculty member and we will go over the various non-tenure faculty, because in the case of the tenure faculty, there is no question about that.

But in the case of non-tenure faqulty, all full time faculty and part time faculty we will go over thelist and I will ask him his opinion about the -- about the quality of the person and how he, what contribution he is making to the department and whether he should be reappointed or not.

And on his recommendation decisions have been made of reappointing him.

Or in cases, of course, in some cases of disappointing such a person.

Q Now, do you generally, not always, but generally accept the recommendations, both positive and negative, of your senior members?

A I could almost say not generally, but always.

Q Is that so with respect to part time faculty?

A With part time faculty as well.

Q And with respect to full time faculty --

A Full time non-tenure faculty.

Q Do you know how much time senior members spend on the appraisal and recommendation process with respect to the non-appointment or reappointment or disappointment of probationary part time faculty?

A I would have no way of determining it.

Some faculty members take it very seriously and they go about it in a very through manner.

Sometimes even sitting in in some of the classes, and in some other cases it is perfunctory, but I have no way of determining.

But it is taken seriously.

Q The quantity of the time spent in the exercise of this authority would depend, would it not, on the number of part time reappointments or disappoints involved?

A That, of course, is understood.

Q Is there an ad hoc committee of senior members Dean Bacon?

A Yes.

Q Tell us about that, if you woild, what it does and how often itmeets?

A Well, this committee --

Q How is it constituted too?

A This committee is really at my call.

It is a committee of -- I might call it ex officio.

Every person who is a senior member will sit on that committee, and whenever I have any problems where I feel that I need advice from them, I would ask them to come to s uch a meeting and discuss whatever I need advise on.

They meet very irregularly.

For example, this semester they met only three times.

Q And last year, wouldyou give us a feel for how many times they met thelast academic year, '73-74?

A I think five or six times.

Q Would you tell us the kind of things that you discuss in this committee?

AFTERNOON SESSION

Q (By Mr. Kramer) And possibly you can think of this problem over the break between now and the next hearing, and it makes a good point to pick up.

MR.KRAMER: Mr. Hearing Officer, can we stop at this point?

HEARING OFFICER: Yes.

I have one question, do the chairmen receive any additional stipend because of their position?

THE WITNESS: No.

HEARING OFFICER: No?

THE WITNESS: No.

HEARING OFFICER: Okay.

Dean Bacon, due to the hour and the problem involved in that Friday evening begins the sabbath for you, and it is starting early today, due to the time of the year, you are excused for now.

As to Dean Bacon, we will commence this testimony on December 17th, which is a date agreed to by the parties at the last hearing date.

We will continue on the 18th if necessary.

At this time I would ask counsel to look through their calendars as to additional dates for hearing, as I don't expect we are going to finish on the 17th or 18th.

MR.KRAMER: Can we deal with that on the morning of

Hearing officer, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Shachtman) Professor Behrends, did you sign the petition submitted in this instant proceeding?

A Yes, I did.

Q And under what capacity did you sign that?

A As an executive officer of the Yeshiva University Faculty Association.

Q And how did you come to serve as an executive officer of that Association?

A I was elected by the faculty, Belfer Graduate School of Science.

Q And what is the purpose of that organization?

A To deal with all matters of labor relations, labor relations matters, in collective bargaining with the administration on matters of wages, salaries, fringe benefits, working conditions and grievance proceedings and so on.

Q And the faculty members of the University participate in that organization?

A Yes, they do.

Q And do they elect representatives or delegates to serve and govern on the executive committee?

A Yes.

The provisions are that each school will elect a

(Discussion off the record.)

HEARING OFFICER: On the record.

I have been informed that the Petitioner does have a copy of the Petitioner's constitution -- is that it, or the bi-laws?

MR. SHACHTMAN: It is the constitution and bi-laws.

HEARING OFFICER: Mr. Shachtman?

MR. KRAMER: I want to review that.

MR. SHACHTMAN: You want to take a look at it?

I have a single copy, I will get you a copy.

(Handing to Mr. Kramer)

MR. SCHACHTMAN: Mr. Kramer, I have some questions of the witness.

MR.KRAMER: By all means.

DIRECT EXAMINATION (Continued)

Q (By Mr. Shachtman) Are there component organizations of the Yeshiva University Faculty Association?

A Yes, one for each of the schools or colleges of the University, excluding AECOM.

MR.SHACHTMAN: Referring tothe Albert Einstein College of Medicine.

Q And including within the Albert Einstein College of Medicine the Sue Golding --

A Division School.

Q And do the constitution and bi-laws of the Yeshiva

University Faculty Association authorize each of the schools of Yeshiva University to participate as a component organization in the Petition?

A Yes, it does.

Q Is this the constitution and bi-laws of the Yeshiva University Faculty Association?

A Yes, it is.

Q I refer to Page 2, where at the top line a number of words were scratched out in pencil.

A Yes?

Q Does this constitute a deletion from the constitution and by-laws?

A Yes, with approval.

Q And were these constitution and bi-laws adopted by the faculty at the Belfer Graduate School?

A Yes, it was.

Q Do you know whether it was adopted by the faculty of anyother school?

A It was adopted by the Ferkauf Graduate School.

MR. SHACHTMAN: I offer this as Exhibit 101.

MR. KRAMER: I would like to review this.

(Constitution and bi-laws were marked as Petitioner's Exhibit 101 for identification, of this date.)

MR. SHACHTMAN: Can I just ask a few more questions, if I may?

HEARING OFFICER: Go ahead.

Q That is not what I am asking you.

At the present time it is or is it not a confederation of three organizations?

A Yes.

Q And the membership of your association is made up of the membership of the component organizations, is that correct?

A Yes.

Q "Your" mean the Petitioner herein?

A Yes.

Q And is it not a fact that under your bi-laws you limit the membership of your component organizations and also of your own organization to faculty members -- I won't read the various titles -- who are not managerial or supervisory employees, pursuant to the National Labor Relations Act as amended?

A Yes.

Q Do you know whether the bi-laws of the component organization contains a similar limitation?

A Yes.

Q Would you have those bi-laws produced for us at the next meeting?

MR.SHACHTMAN: Yes, we shall.

MR.KRAMER: Mr. Hearing Officer, at this time I would like to postpone further questions, further cross

MR. KRAMER: We have no objection to the document.

HEARING OFFICER: Fine.

It's received.

(Whereupon, Petitioner's Exhibit 102 was received, in evidence.)

Q (By Mr. Kramer) Dr. Behrens, does the Belfer Graduate School of Science Faculty Association currently admit the membership departmental chairmen?

A Yes, it does.

Q And associate or assistant deans?

A Assistant dean since we have only an assistant dean.

Q Principal investigators?

A Yes.

Q Members of the Univeristy Faculty Review Committee?

A Yes, the elected representative from the Belfer School.

Q The representative of the Belfer School on the Joint University Committee on academic priorities?

A Yes, the elected representative, I am the elected representative.

Q In other words, Dr. Behrens, you're both the elected representative on the Joint Committee on academic priorites for the Belfer School and also the president of the Belfer School of Science Faculty Association, is that correct?

A I should modify it slightly because I am the elected representative to the Council of Graduate Schools, and the Committee on Priority and Planning is a combined committee of the undergraduate council and the graduate council.

So in that sense I am the representative of the Belfer School to the Committee on Planning and Priorities and I am the president of the Belfer Faculty Association.

Q And you are also a member of the graduate council, are you not?

A Yes.

Q All right.

Dr. Behrens, you are also an officer of the Yeshiva University Faculty Association?

A Yes, I am.

Q I know I asked you this question last time but we don't have a transcript here to refresh my recollection, in what capacity?

A I am a member of the Executive Committee of the Yeshiva University Faculty Association being the representative from the Belfer School.

Q Dr. Behrens, you are also a member, are you not, of a committee that is currently involved in the formation of a university senate?

A Yes, I am.

I am the elected representative from the Belfer School.

Q (By Mr. Kramer) Dr. Bacon, I believe we left off our questioning last time with the subject of the Ad-hoc Committee or the committee as it's called of senior members at your university.

Could you give us some additional examples of matters that are dealt with by that committee or have been dealt with by that committee?

A Well, we had -- the committee we dealt in that committee we dealt with a number of problems which are important for the college.

For example, we had to make a decision being concerned about the fact that many of the high schools seniors are being accepted to schools -- to colleges and we had to make a decision of what to do in regards to our own situation.

We have a high school as you know, and the problem arose what will happen with the seniors in our own high school.

I presented this problem to the senior members, I made it one item on the agenda, and it was unnanmiously -- it was a unanimous decision of that group that we ought to establish what we call now a co-op program whereby we would allow high school seniors from our -- from our high schools who maintain or showed certain standards to admit him to the college, not as a college student, not as full-time college students but they would remain high school students that would be permitted to take courses in -- in the college.

This is the coop program now, and it's now -- has been in operation now for one semester and it's going to be an item placed on the faculty assembly in about two weeks from tomorrow to explore and find out whether changes would be in order, whether we should continue or we should discontinue it.

That is one such item that was discussed.

Q Dr. Bacon, is there competition today between colleges for entering students?

A It's brutal.

Q Is Yeshiva College affected by that competition?

A We are very much affected by it.

Q Would you tell us about that?

A Well, I don't know to what extent I want to go into it.

I don't want to mention names of colleges around Yeshiva College our college.

Q That was not the intentment of my college that you mention names but if you chose to, fine.

A But the new programs that have been established, especially the City University, is one such important consideration in -- in the competition for students that we have to face.

We have -- the one that I just mentioned with juniors and we hear now even sophomores have begun to be accepted by some of the schools in New York.

We have been -- we have been approached by a number of Jewish high schools whether Yeshiva College would want to enter and give programs right at the high schools and it was decided we are not going to enter into this picture although it might help us quite a bit in attracting sophomore students.

The only decision that was made is to make exceptions for our own high schools and that's what we are doing right now.

Q Now, does that have a financial impact on the university?

A Well, students, of course, has a definite impact, financial impact on the university.

Q Would you explain to the Hearing Officer how that comes about?

A Well, a student -- a student brings in tuition, a student brings in money for living in the dormitory.

A student brings in money for utilizing our cafeteria, and I must say that I don't know exactly what the figure is but the figure was quoted several times, at the moment we lose a student we lose a substantial amount of money per student, and -- and any student who doesn't come, this is a loss to the university sustained, financial loss the university sustains.

Q The decision to implement the coop programs was made b y you and senior members?

A Senior members.

Q The decision to retain that program will be made by faculty assembly?

A Further ramifications will be made by the faculty.

Q I think you told us previously you feeling that you are bound by faculty assemblies.action?

A I must say that I was very reluctant to bring this program, I am very much -- I think that all of us are, faculty is very concerned about maintaining standards in a sea of colleges and universities thathave decided to water them down all around us, and I must say I -- that I am very gratified to find the faculty feels that way and I must say that I was not -- I just presented it as a possibility, and the faculty -- the -- that committee unanimously decided that we should go ahead with this program.

Q You told us in your earlier testimony a few minutes ago that you decided not to provide the coop program for high schools outside of the university family so to speak.

Would you explain how that decision came about?

A Well, that -- actually -- it --

Q As best as you can recall?

A It simply -- it was not brought up. We simply didn't go beyond that.

At the faculty -- at this senior meeting this matter was explored and we decided at this moment to only go with our own high schools.

So at this moment I don't think there is anything else that I can add to -- that I can add to the problem.

Q In other words, the decision was reached by the senior members and you?

A By the senior members, right.

Q Now, would you give us, Dr. Bacon, if you can, another example of the kind of thing you have dealt with at the senior members meetings?

A Well, theone that comes of course to mind is the one that we had only recently which was in response to the document which I -- which I mentioned at a previous testimony and that is the -- the report by the State Education Department which two very important items were brought up which had some -- which will have some very serious affect upon the operation of the college.

One, that new programs and possibly at a future date existing programs will be approved by the State Education Department only if they are competency based and not as we have it -- had it until now simply by students passing certain courses, credits and what have you.

Now, this of course because of the ramifications that it will have on the future operation of the college I presented that aspect to the senior members of the faculty, and we have left it open for further discussion because we really didn't quite understand what the State had in mind when it spoke about competency oriented programs.

We could see a competency oriented program possibly in physical circumstances or in mathematics, in foreign sciences, but we could not understand what it would mean in a case like philosophy or what it would do in English or in French or what have you, so I was asked to explore these aspects and I now have collected the document which I am sending on to all members of the senior faculty and I informed them that we will -- we will discuss -- that's going to be a matter to be discussed at a future committee meeting, meeting with the -- with the senior faculty.

Another item which appeared which has some ramifications, not only for the college but for the entire university, has to do and I also mentioned that in passing before, it has to do with the -- with guide lines for --

for tenure.

Guide lines under what circumstance tenure will be recommended for a faculty member which up until now really didn't exist, and the State Education Department indicated that they will require the university to report to the State Education Department what these guide lines, the university guide lines were.

So obviously what I did is presented this to the -- to that committee and the committee decided that it should be brought before the faculty assembly, that the faculty assembly or to recommend it to the faculty assembly that a committee be elected by the faculty assembly to work on that, and that was actually done and I -- I think on e of the Ad-hoc Committees that I talked about last time as a result of that -- of that decision made by the senior faculty, it was presented to the faculty assembly, the faculty assembly elected the members of that committee and -- without stipulation who should be the chairman or not so I simply took the initiative calling such a committee, asked them to constitute themselves, elect a chairman and left them to their own devices to do what they want.

Q Now, Dean Bacon, do you have an assistant dean?

A Yes, I do.

Q What is his name?

A His name is Dr. Wischnitzer.

Q Putting aside Dr. Wischnitzer, do you have any other assistant s who work for you --

A Well --

Q -- other than a secretary?

A I would say not.

Q Would you tell us as best as you can what Dr. Wischnitzer does?

A Well, Dr. Wischnitzer was primarily appointed as the person who would be in charge of the -- of the premed program which is a -- the strongest program in the college the largest -- the largest continuing agent of our students who come to Yeshiva College come as premed majors, and we felt that it would be very important that we have a person who would not only be in charge of the program which of course means that whatever he does is by approval of the faculty, but that he -- that he, for a tough premed program which is probably the toughest we have in the college and so this is basically -- that was the -- that was the initial appointment under which Dr. Wischnitzer was brought to the college.

He has had -- he came to Yeshiva College from a -- from a medical school, from Flower Hospital -- from Flower Medical School.

In addition, since he has the -- the administrative position of an assistant dean, he is also in charge of some such jobs as collecting the -- the classroom -- excuse me, the class assignments and hours for the schedule of courses, he collects them at one time or another, about this time for example, he would send a memo to all senior faculty members asking them to -- to let him know what courses would be offered in each department or subject area for next year, and time assignments, faculty assignments and he simply collates it and then we put it into the schedule of course.

He also is in charge of collecting and collating faculty publications which we publish once every five years.

Q Does he teach anything?

A He teaches, yes.

Q What does he teach?

A He teaches one course per semester.

Q In what subject?

A In Biology.

Q As a medical doctor?

A He is not a medical doctor, no, he is a biologist.

Q Does Dr. Wischnitzer efforts -- do Dr. Wischnitzer's efforts have any affect on the number of students -- undergraduate students, that is, that your school is able to place in medical school?

MR. SCHECTMAN: I object to the form of the question.

MR. KRAMER: I withdraw the question.

Q (By Mr. Kramer) What affect if any does Dr. Wischnitzer's efforts have on the ability of the college to place students in medical school?

A He has an important affect.

Q Would you tell us about that, please?

A First of all, students know that we have such a program and that we have such a man who is very, very effective, has done -- worked out a very efficient way of maintaing records right from the freshman year of the students and the students of course know about that and I must say that we have been -- we have been very -- in a very good position to and have had a very high, almost incredibley high acceptance rate of our premed majors to -- not only to medical schools but good medical schools in the country.

Q Does Dr. Wischnitzer also deal with medical schools to coordinate programs with them?

A No, he does not.

Q What dealings does he have with the medical schools?

A Well, he dlivers the recommendations which is one important thing and the collation of letters of recommendation from faculties, from faculty members, and an assessment, in other words, an evaluation of each student which goes along with these letters of recommendations to whatever medical school a student applies.

Q Does the health or lack of health of the premed program have an affect on the finances of the university?

A I didn't quite understand that health?

Q Or lack of health, either way?

A What is health?

I am sorry.

MR. KRAMER: Withdraw the question.

Q (By Mr. Kramer) Does the functioning of the premed program have an affect on the financing -- finances of the university?

A Oh, I think it has.

Q Would you tell us about that?

A Well, if students know that they have a good chance and let's say that they inspite of the fact that we have this tough graduating situation in the college and that we are on record of maintaining standards, and the fact is that students know that if they can survive that they have a good chance of being accepted to a medical school, to a good medical school and that will of course, attract them.

Q Now, you told us a few moments ago, Dr. Bacon, that one of Dr. Wischnitzer's many functions is to counsel students to drop the premed program?

A That's right.

Q Does that have an affect on the finances of the university?

A It definitely has because a number of students as I said, the largest amount of students that come to Yeshiva College come with intentions as premed majors and if one compares the amount of students who came in with that intention and the amount of students who actually remain to the bitter end as premed majors, there is a definite differential there which is quite obvious.

Q Would it be correct to state he establishes policy in this area?

A No, no, I don't think it would be correct to say that.

Q What does he do in this area?

A Well, he has -- he is simply -- he is simply guiding the students.

He is simply guiding the students to do and follow the decisions that are being made by the faculty in this matter.

Q How many -- approximately how many faculty members, full and part-time work at your college?

A We have about -- we have about -- we have 36 full-time, 40 part-time and 40 which we consider Yeshiva University full-time, Yeshiva University faculty.

HEARING OFFICER: I am going to overrule the objection and leave it to you to bring up on cross examination.

Q (By Mr. Kramer) Approximately what percentage of the courses offered at Yeshiva College in fall term, 1974, were taught by part-time faculty members?

A About one-third.

Q Now, focusing on these courses --

A I am talking about part-time -- part-time Yeshiva College, not including part-time university.

Q One-third by part-time Yeshiva College personnel?

A Correct.

Q An additional courses I take it by university --

A Right.

Q -- people,is that right?

A Right.

Q Just focusing now on the part-time Yeshiva College personnel, could you tell us if there are courses that are currently being taught by full-time Yeshiva College personnel faculty members that were previously taught by part-time Yeshiva College personnel and faculty members?

A Well, it is not easy to -- this is not easy to determine because one would have to look for the quid pro quo situation.

Clearly, I could clearly identify the biology department

A No, they are not.

Q Is there a salary scale or schedule for part-time Yeshiva College faculty?

A The answer is no.

Q How is their compensation determined, Dr. Bacon?

A Bascially each -- each one is negotiated, each salary is negotiated with the individual -- with the individual part-time person and it is determined by large extent to the qualification of the person, the experience and to the need that the college has for such a person.

Sometimes we have an emergency, it is very difficult to bet somebody, obviously we will have to deal with such a person with such a situation differently than with the person with another one.

Q Approximately what percentage of your full-time faculty have tenure by the way?

A I would say a little less than 50 percent tenured and non-tenured 19 -- 17 I think are non-tenured.

MR. KRAMER: Would you please marked that Employer's Exhibit 114 for identification?

(Whereupon, the above described document was marked as Employer's Exhibit 114 for identification.)

Q (By Mr. Kramer) Dr. Bacon, do you have departmental advisory committees at Yeshiva College?

A WE do.

Q What is a departmental advisory committee?

A Well, that was a matter discussed and decided on in the senate, and not voted by the faculty.

I really shouldn't put it in the negative sense.

It was approved by the faculty overwhelmingly, that each subject area or each department where we have a majority of a committee appointed by the senior faculty member consisting of two faculty members and two students would -- who would meet from time to time and review the programs in the department and make appropriate recommendations.

Q Some of the departments as a matter of practice have more than two faculty members?

A Yes. well, this is the minimum we expect.

In some cases we can't even have them any more because there is only one -- a one man team, I think in classics more than one is there -- yes.

Q Now, I show you Employer's Exhibit 114 entitled Departmental Advisory Committees 1973, '74, are you familiar with this document?

A Yes, I am.

Q Where did it come from, Dean Bacon?

A Well, this is simply a -- this comes from my office.

Q Is this a paper that is on file in your office?

A It's on file in my office, yes.

Q Now, have you reviewed this document?

A I did.

Q Does it accurately at least to the best of your recollection reflect the composition of the departmental advisory committees for the academic year 1973, '74?

A It does.

Q Now, I notice that there are some asterisks on this document.

Did you put those asterisks there?

A Yes, I did.

Q And there is a footnote that says asterisk part-time faculty members, did put that there?

A Yes. Sure.

Q Those denote I take it, those asterisks, part-time faculty members?

A Yes, that was the intent -- purpose of putting that there.

MR. KRAMER: I offer Employer's 114 in evidence.

MR. SCHECTMAN: No objection.

HEARING OFFICER: Received.

(Whereupon, Employer's Exhibi
114 was received in evidence.

MR .KRAMER: I have no further questions of this witness at this time.

HEARING OFFICER: Mr. Schectman?

Q (By MR. Schectman) Dr. Bacon, you defined the full-ti load of faculty at Yeshiva College as 12 contact hours or its equivalent, did you not?

A Correct.

Q Could you give us -- could you define what you mean by equivalent and give us some examples of how that is used at the college?

A We have an executive secretary of the scholastic committee and by agreement it was determined that the he will do any work as a scholastic -- as the executive secretary of the scholastic committee, that he will -- that his load will be considered as nine hours and the three hours normally he would go into teaching would become -- would be the equivalent of that -- of the work that he is doing as such -- in that case.

Q You said it was agreed, it was agreed between --

A We talked. We discussed it and he felt that would be a nice way of handling it.

Q And it was agreed between that individual and yourself?

A That's correct.

Q Do you normally define or come to agreement with individual members of the faculty as to determining their equivalent status for full-time definition?

A There are only two faculty members in the college who are in that category.

Q Who is the other?

A Dr. Wischnitzer who was determined as the assistant dean.

Q And was the definition of his equivalency likewise arrived at between your --his agreement with you?

A I don't remember at this moment whether Dr. Chandler was involved who is the senior member in that -- he certainly was involved as far as the biology was concerned but in determining whether this would be the equivalent or not, I must say I don't remember now but I would guess that it was determined between him and myself.

Q And have other faculty members in the last three academic years made requests for some equivalent status to you?

A I have no recollection.

Q In the last three academic years have any other faculty members had some equivalent status for full-time definition?

MR. KRAMER: May I have that question read back before you answer it?

(Record read.)

A There was one faculty member who in his function as the senior faculty member of the largest department in the college in English and is the chairman of the division who also has this kind of equivalency.

Q He has it at the current time?

A He has it at the current time. I must say I forgot about that, yes.

Q Was that reached by his agreement with you?

A That was, yes.

Q You referred, Dean Bacon, to the Yeshiva program, could you tell us what that is more particularly?

A The Yeshiva Program is a program which is really not under the jurisdiction of the college, but it is the Talmud Department wherethe students -- I think it would be important to explain that all our students admitted to the college must agree to participate -- to participate in a Jewish study program.

They can do it by either -- by either doing it -- doing the academic work in the James Dreyer School or in the Erma Michael College or in the YP Program so really the James Dreyer School is a school separate from the college and just as the Erma Michael School is a school separate from the college the UP -- the YP Program is also a school separate from the college.

The only contact that we have is that all those -- these students who are inthe program are mandated to take certain courses in the college, like Hebrew, two years of Hebrew, two years of Jewish history and eight semesters of Hebrew language and literature which is basically courses in the Bible.

Q We have heard extensive testimony in these hearings about the different kinds of apointments faculty members receive to the university.

Are you familiar with the different kinds of appointments which faculty members have at Yeshiva University at similar colleges?

A I want to answer the question correclty -- I wonder if you could rephrase it?

Q For instance we have heard testimony that faculty members are sometimes appointed to the university with a base appointment at a particular school.

We also heard that faculty members are appointed to the university were university wide appointments?

A Right.

Q And we have also heard testimony as to appointments, joint appointments where faculty members are appointed with more than one base.

What type of appointments do faculty members in Yeshiva Program have?

MR. KRAMER: I must object to the mischaracterization of the earlier record because counsel mentions -- is referring obviously to the earlier record, three types of appointments.

We also have a 4th type of an appointment detailed in that record which is a single base appointment with responsibilities for -- or the possibility of responsibilities

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We also have a 4th type of an appointment detailed in that record which is a single base appointment with responsibilities for -- or the possibility of responsibilities in other schools.

If you will recall that was in the earlier record.

MR. SCHECTMAN: It was my opinion that was encompassed by the single base appointment if we want to break it out as four kinds of appointments, I have no problem with that definition.

MR. KRAMER: With that correction, I have no quarrel with the question.

HEARING OFFICER: Okay.

(By Mr. Schectman) In light of that description of the four kinds of appointments existing at Yeshiva College--University what kinds of appointments do faculty to the Yeshiva University have.

A I would have no input in that. I have nothing to do with that.

Q You have no knowledge?

A I have no knowledge and I have no input in that.

I am not involved. I am not involved at all in that -- in the appointment of faculty members to the Y.P. Program.

Q Who is involved in that?

MR. KRAMER: Mr. Hearing Officer, it may help counsel for Petitioner if he were to know that we intend to put a witness on with familiarity in this area.

THE WITNESS: Because I really have no knowledge.

MR. SCHECTMAN: All right.